

No. 11874

United States

Circuit Court of Appeals

for the Ninth Circuit

PETER PETERSEN, MRS. PETER PETERSEN and GEORGE PATRICK,

Appellees,

vs.

PAUL W. SAMPSELL, L. BOTELER and McINTYRE FARIES, as Trustees in Bankruptcy of the Estate of Christ's Church of the Golden Rule, bankrupt, and CHRIST'S CHURCH OF THE GOLDEN RULE, bankrupt,

Appellees.

Transcript of Record
SUPPLEMENT

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

INDEX

	Page
Adjudication and General Reference, Order of	17, 25
Answer of Trustees in Bankruptcy to Motion to Set Aside Adjudication.....	30
Names and Addresses of Attorneys.....	1
Motion to Set Aside Adjudication, Notice of..	26
Notice of Appeal	127
Order Denying Motion to Set Aside Ad- judication	122
Order on Petition for Dismissal and Order of Adjudication	20
Orders of Adjudication and of General Reference	17, 25
Petition in Bankruptcy, Voluntary.....	15
Petition under Chapter XI of the Bankruptcy Act	2
Exhibit A—Property Statement	11
Exhibit B—Unsecured Creditors of Christ's Church of The Golden Rule as of 10/31/45	14
Exhibit C—Estimated Monthly Budget to Operate Entire Property	14

	Page
Resolution adopted by the Board of Directors of Christ's Church of the Golden Rule, a Religious, Non-Profit, California Corpora- tion, Certified Copy of.....	18
Transcript of Testimony:	
Excerpts from November 14, 1947.....	33
Witness for Petitioners:	
Bell, Arthur L.	
—direct	81
Witness for Trustees:	
Utley, Ernest R.	
—direct	99
—redirect, direct	106
Excerpts for Petersen Transcript of June 12, 1946	121

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

RUSSELL E. PARSONS

COBB & UTLEY

639 South Spring Street

Los Angeles 14, California.

For Appellees:

IRVING M. WALKER

GRAINGER & HUNT

830 H. W. Hellman Building

Los Angeles 13, California. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Southern District of California, Central Division

No. 44128-WM

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN
RULE, a Non-Profit California Corporation,
Debtor.

PETITION UNDER CHAPTER XI (SEC. 322)
OF THE BANKRUPTCY ACT

To the Honorable Judges of the Above Entitled
Court:

The verified petition of Christ's Church of The
Golden Rule respectfully shows:

I.

That at all times herein mentioned, your petitioner is a non-profit corporation duly organized and existing under the laws of the State of California, as a private corporation under Title 12, Article 1 of the General Non-Profit Corporation Law of the State of California and for the greater portion of six months next immediately preceding the filing of this petition, has maintained its principal place of business and has had property and conducted its operations from and at 306 West Third Street, Los Angeles, California; that your petitioner is a corporation entitled to file a peti-

tion under Chapter XI of the Bankruptcy Act as amended.

II.

That no bankruptcy proceeding has heretofore been filed by [2] your petitioner and no involuntary petition is now pending against it. That a State Court Receiver has been appointed upon application of the Attorney General for the State of California and is in possession of a portion of your petitioner's property; that said appointment has occurred within four months of the filing of this proceeding.

III.

That your petitioner is not insolvent but is unable to pay its unsecured debts as they mature and desires to procure the benefits given under Chapter XI of the Bankruptcy Act as amended.

IV.

That in accordance with the by-laws, rules, and regulations of said debtor church, when each of the members of the church became members thereof, they, and each of them, divested themselves of all worldly goods and possessions giving the same to the debtor church, and with the understanding that they would thereafter be classified as "Children of the Church", so long as they complied with its teachings, charter and by-laws, devoting their lives to its ministry. In the course of their training, they

are student ministers, work on, operate and manage the various church properties and enterprises which are intended to provide revenue for their particular type of Christian Crusade and ministry and are maintained and fully supported by the church during their membership therein. That said church is committed to maintain and fully support its members so long as they comply with its teachings, charter and by-laws.

V.

That your petitioner alleges, as required by Section 324, Article IV of Chapter XI:

(a) That your petitioner has certain executory contracts; copies of which are statements pertaining to the contents thereof and will be filed or made in connection with the schedules to be filed by your petitioner;

(b) That a statement of affairs of your petitioner will be [3] filed within the time directed by the above entitled Court;

(c) That the Clerk's filing fee will be paid on the filing of this petition;

(d) That your petitioner's assets are located in different Cities and Counties and a large part of your petitioner's books and records and information required to file schedules are in the hands of the Receiver in the State Court and in other localities and your petitioner is unable to file correct schedules of its assets and liabilities as required by

law and desires an extension of time from the above entitled Court within which to file said schedules.

That generally your petitioner's assets consist of office buildings, hotels, sanitariums, churches, ranches, laundries, as are briefly shown in Exhibit "A" attached hereto and made a part hereof; and your petitioner's liabilities are in general as shown in Exhibit "B" attached hereto and made a part hereof; that Exhibit "B" contains a list of your petitioner's unsecured creditors as correct and complete as your petitioner is at this time able to set them forth with the information and documents available to your petitioner.

VI.

That attached hereto and marked "Exhibit C" is an estimated budget of the monthly expenses required to operate and carry on the assets and commitments of your petitioner, including the maintenance and support of its members which is the sum of approximately \$66,500.00.

VII.

That your petitioner's financial position has become involved by reason of the appointment of the State Court Receiver in the action of certain creditors, both secured and unsecured in endeavoring to collect the amount of their obligation.

VIII.

That it is necessary for your petitioner to carry on its obligations, including the maintenance and

support of its members and the continuance of their training as student ministers of this church, [4] after the filing of this petition and to fulfill and discharge commitments and contractual obligations and to conserve and protect its property and to liquidate the same in the ordinary course of business in order to carry out the plan of arrangement hereinafter proposed.

IX.

Debtor's Proposed Plan of Arrangement

That your petitioner proposes the following plan of arrangement:

Article 1: That the creditors of your petitioner be divided into classes and that the proposed classes be as follows:

Class A: Expenses of administration that may be allowed and ordered paid;

Class B: All creditors entitled to priority as provided in Section 64a, subdivisions 2, 4, and 5, of the Acts of Congress relating to Bankruptcy;

Class C: Obligations as they mature to secured creditors in accordance with the terms of their encumbrance;

Class D: To pay pro-rata, at intervals not to exceed six months, dividends upon unsecured creditors' claims until said claims are paid in full.

Article 2: That said plan of arrangement be carried out in such a manner as not to interfere in

any way, with the religious teachings, and student ministry training, and living and working arrangements of the church members and their families. That in so doing a substantial saving will result from the operation of the properties herein mentioned.

Article 3: That the debtor be permitted to make payments from time to time when funds are available in accordance with this proposed plan of arrangement, and that it be given an extension of time within which to complete this arrangement and to discharge all [5] of the creditors' claims as provided and proposed in this arrangement.

Article 4: That a Receiver be appointed by the above entitled Court to take possession of all assets and to handle and disburse all receipts and to conduct and operate the affairs and business of the above named debtor under the supervision and orders of this Court with authority to employ agents, managers, and assistants as may be required to carry out the debtor's plan of arrangement.

Article 5: All debts incurred after the filing of this petition prior to a confirmation of the arrangement shall be paid in full and in such manner as ordered by the above entitled Court.

Article 6: The Court shall retain jurisdiction of the debtor's property and the operation of same until the payment in full of all creditors' claims,

or until the secured and unsecured creditors are by stipulation or otherwise satisfied.

Article 7: In the event any claim is in controversy in respect to classification or the amount due, the debtor, under order of Court, may make such deposit in such manner as the Court may direct in respect to said disputed claim and proceed to pay other creditors and be restored to possession pending a final determination of said disputed claim.

Article 8: That the debtor petitioner be permitted to photostat or make whatever copies that they may desire of any and all records which may be necessary to submit to the Court or the Receiver, and wherever possible, to substitute photostatic copies for originals for the Receiver's use, prior to delivery of said records to receiver.

X.

That your petitioner is advised that Chapter XI of the Bankruptcy Act is the appropriate section of the Act under which to seek relief, and that your petitioner is not insolvent and that his business can be operated in such a manner, and that if permitted to continue its operations as proposed in this petition, your petitioner can pay all of its creditors in full. [6]

XI.

That it is necessary for the speedy and proper administration of the debtor's affairs and the equitable payment of creditors, that all creditors and parties be enjoined from commencing or prosecut-

ing any suit or foreclosure proceeding in any form or manner other than before the above entitled Court.

Wherefore, your petitioner prays that proceedings be had upon this petition in accordance with the provisions of Chapter XI of the Acts of Congress relating to Bankruptcy, and that all creditors and all other parties be enjoined from commencing or prosecuting any suit in any Court or conducting any sale or foreclosure proceedings affecting the property of the debtor, or repossessing any property, except before the above entitled Court.

That the above entitled Court appoint a Receiver to take charge of the debtor's assets and with full authority to operate and carry on the debtor's business affairs, pending a confirmation of the debtor's proposed arrangement and that an adjudication be stayed, and that your petitioner be granted such other and further relief as is just and proper in the premises.

CHRIST'S CHURCH OF THE GOLDEN
RULE,

By A. E. Knapp,
Secretary Treasurer,
Petitioner.

RUSSELL E. PARSONS,
COBB & UTLEY,

Attorneys for Petitioner.

By Ernest R. Utley [7]

[Verified]. [8]

Resolved that in the judgment of the Board of Directors it is desirable and for the best interests of this corporation, its creditors, members and other interested parties, that a petition be filed by this corporation praying that it be given relief under and pursuant to Chapter XI of the Bankruptcy Act as amended, and

It Is Further Resolved that the Secretary and Treasurer of this corporation be and she is hereby authorized and directed on behalf and in the name of this corporation to file the necessary petition and schedules and statement of affairs and any and all other papers that may be deemed necessary and proper in connection with said proceeding, and

Be It Further Resolved that said corporation employ Cobb & Utley and Russell E. Parsons as its attorneys in connection with said bankruptcy proceeding, the fees of said attorneys to be paid pursuant to petition and order of Court as provided by law.

I hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Directors of said corporation at a duly and regularly called and held meeting of said Directors held on the 1st day of November, 1945, at which all of the Directors of said corporation were present and voted; that said resolution appears on

the minutes of said meeting and that it has never been revoked or modified.

A. E. KNAPP,

Secretary and Treasurer of Christ's Church of the Golden Rule, a religious non-profit California corporation. [9]

EXHIBIT "A"

Property Statement

Date of Purchase	County	Address	Purchase Price Value	Unpaid Bal. of Principal as of Financial Statement of 12-31-44
1- 1-44	San Bernardino	Cannery, Redlands California	55,000.00	51,000.00
9- 1-43	Imperial	Ranch, Brawley California	32,000.00	29,660.00
1- 1-44	Imperial	Furniture, 527 "D" St. Brawley, Calif.	949.75	
4-13-44	Imperial	Ranch, A G. Jones, Imperial Co., Calif.	60,000.00	33,979.48
3- 1-44	San Bernardino	Dairy Ranch, Meadow Sweet Farms, Claremont, Calif.	127,260.75	110,978.59
11- 8-43	Imperial	Ranch, Geo. Jones Imperial Co., Calif.	25,000.00	
4-26-44	Imperial	Ranch, Brawley, Calif.	32,000.00	5,967.11
2-29-44	Imperial	5 Vacant Lots Brawley, Calif.	2,000.00	
2-18-44	San Bernardino	2 Lots & House, Redlands, Calif.	2,500.00	500.00
1- 1-44	Imperial	Lot , Brawley, Calif.	6,000.00	3,088.54
5- 1-44	Imperial	Ranch, Russo Bros., Imperial Co., Calif.	168,000.00	143,056.61
12-16-43	Imperial	Ranch, Brawley, Calif.	45,000.00	21,522.00
3- 1-44	Imperial	Lots, Brawley, Cal.	5,450.00	540.00

Exhibit "A"—Property Statement—(Cont.)

Date of Purchase	County	Address	Purchase Price Value	Unpaid Bal. of Principal as of Financial Statement of 12-31-44
2-10-44	Los Angeles	Office Bldg., 406 S. Spring St., Los Angeles, Calif.	340,000.00	212,569.00
43	Los Angeles	Bank Bldg., 163 Marine St., Ocean Park, Calif.	25,000.00	18,327.00
43	Los Angeles	Beach Club, 1351 Ocean Front, Santa Monica, Calif.	32,000.00	30,000.00
8-20-41	Los Angeles	Hotel, 626 Azusa Av., Azusa, Calif.	15,250.00	8,700 00
9-28-43	Los Angeles	Beach Club, 808 Ocean Front, Santa Monica, Calif.	90,000.00	70,000.00
3-31-44	Los Angeles	Residences, 751-763 S. Coronado, Los Angeles, Calif.	20,000.00	16,150.00
10-30-43	Los Angeles	Furniture & Fix. 808 Ocean Front Santa Monica, Cal.	1,500.00	
2-11-44	Los Angeles	Apts. & Stores Main & Marine St., Ocean Park, Calif.	13,500.00	9,219.02
2-10-44	Los Angeles	Equipment, 216 Marine St., Ocean Park, Calif.	3,750.00	2,787.27
12-22-43	San Bernardino	Hotel, Casa Blanca, Ontario, Calif.		
12- 7-43	Los Angeles	Office Bldg., 845 s. Figueroa St., Los Angeles, Calif.	200,000.00	158,319.61
8-28-43	Los Angeles	Residences, 8433 Harold Way, Los Angeles, Calif.	25,000.00	
10-14-43	Los Angeles	2-Story Store Bldg. 333-337½ S. Hill St. Los Angeles, Calif.	35,000.00	27,107.00
1-28-44	Los Angeles	Residences, 745 S. Coronado, Los Angeles, Calif.	6,000.00	2,679.85
12-15-43	Los Angeles	Beach Club, S.M. Athletic Club, 1441 Ocean Front, Santa Monica, Calif.	45,000.00	36,534.49

Date of Purchase	County	Address	Purchase Price Value	Unpaid Bal. of Principal as of Financial Statement of 12-31-44
9-24-43	San Mateo	Creamery, 3072 Bayshore	8,100.00	800.00
Aug. 1943		Dairy on Oakland San Jose Highway	89,500.00	56,000.00
Oct. 43		American Laundry 585 E. Empire St., San Jose, Calif.	37,500.00	
Dec. 1943		Residence, 68 S. 10th St., San Jose, Calif.	4,500.00	1,225.00
Jan. 1944		Warehouse, 70 Mary St., San Francisco, Cal.	9,350.00	4,044.97
Jan. 1944		Residence, 67 S. 5th St., San Jose	11,500.00	4,208.00
Feb. 1944		Ranch, Colma, Cal.	57,500.00	
Feb. 1944		Parking Lot, Next to 425 Mason St., San Francisco	115,000.00	82,139.66
Mar. 1944		830 Folsom St., San Francisco	13,000.00	10,746.79
Jan. 1944		Denman Garage 902 Bush St., S. F.	22,500.00	9,307.37
Feb. 1944		Redwood Sawmill Willitts, Calif.	50,000.00	34,073.14
		Paradise Meadows Dairy & Stock Ranch Eagle Point, Ore.	250,000.00	240,000.00
		Galbreath Auto Ct. Jackson Co., Ore.	13,500.00	11,000.00
		Grants Pass Hotel	35,000.00	31,000.00
		Hillcrest Bulb Gardens, Grants Pass Josephine Co., Ore.	250,000.00	220,000.00
		Ladino Cheese Factory, Jackson Co., Oregon	6,000.00	5,000.00
		Fish Hatchery, Jackson Co., Ore.	10,000.00	9,000.00
		Approximately 60 head purebred dairy Cattle	60,000.00	20,000.00
		Automotive and farming equipment	100,000.00	
		Growing Crops	100,000.00	
		Approximately 100 cars and trucks	300,000.00	
			2,956,110.50	1,731,230.50

EXHIBIT "B"

Unsecured Creditors of Christ's Church of
The Golden Rule as of 10-31-45(Estimated as closely as possible from figures available
at this time)

Name	Address	Approx. Amount
Nellie O. Paget, Insurance premiums	3153 Middlefield Road Redwood City, Calif.	400.00
Utilities and miscellaneous accounts payable	Secure from Project Records	15,000.00
O. R. Sharp	Westmorland, Imperial Co. California	1,500.00
Faure Co.	El Centro, Calif.	150.00
Gulletts, Grocery,	Brawley, Imperial Co., Calif.	300.00
Phillip Jones (Water Pump)	El Centro, Calif.	300.00
Miscellaneous Doctor Bills	Imperial Valley Farms Co.	200.00
Nordahl Co., Alfalfa Seeds	Unknown	3,000.00
Max Phaegley Brawley Implement Co.	Brawley, Calif.	1,200.00
Imperial Auto Electric Co.	Brawley, Calif.	100.00
Misc. current bills	Co-Workers Imperial Valley	500.00
N. L. Nagler	Hotel Medford, Medford, Ore.	5,000.00
Estate of Robert Nelson	Brawley, Calif.	10,000.00
George Gore	Kearny st. San Francisco	6,000.00
A. L. Wirin, Attorney	257 S. Spring St., Suite 501 Los Angeles	2,500.00
Lorrin Andrews, Attorney	326 W. 3rd St., Los Angeles	2,500.00
Russel E. Parsons, Atty.	306 W. 3rd St., Los Angeles	5,000.00
Richard B. Bell, Services Rendered	130 Montgomery St., San Francisco	1,000.00
Frank Rusalem	Hotel Cecil, San Francisco	10,000.00
Ruby V. Chapman	1201 California St., San Francisco	300,000.00
		<hr/> 364,650.00

EXHIBIT "C"

Estimated monthly budget to operate entire property \$66,500.00

[Endorsed]: Filed Nov. 1, 1945. [15]

[Title of District Court and Cause]

VOLUNTARY PETITION IN BANKRUPTCY

To the Honorable Judges of the District Court of
the United States for the Southern District of
California, Central Division:

The petition of Christ's Church of the Golden Rule, a non-profit California corporation, of 306 West Third Street, in the City of Los Angeles, County of Los Angeles, State of California, engaged in the business of promulgating its interpretation of Christ Jesus' teachings and their practical application to human relationships, particularly His economic teachings and the evidence and proof that their sincere application would uproot the causes of poverty, crime and war . . . in other words, a demonstration of Christly actions as well as words, respectfully represents:

1. That your petitioner is a corporation organized and existing under the laws of the State of California, and is not a municipal, railroad, insurance or banking corporation, or a building and loan association.

2. That your petitioner has had its principal place of business at 306 West Third Street, Los Angeles, California, in the above [16] judicial district, for more than six months immediately preceding the filing of this petition, and has maintained and operated a place of business at said address for more than six months immediately preceding the filing of this petition.

3. Your petitioner owes debts and is willing to surrender all its property for the benefit of its creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

4. The schedule hereto annexed, marked Schedule A, and verified by your petitioners oath, contains a statement of its debts, (estimated as accurately as possible), and, so far as it is possible to ascertain, the names and places of residence of its creditors, and such further statements concerning said debts as are required by the provisions of said Act.

5. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains the estimated value of property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that it may be adjudged by the court to be a bankrupt within the purview of said Act.

CHRIST'S CHURCH OF THE GOLDEN
RULE, a non-profit California corporation

By A. E. Knapp, Secretary
Petitioner

A. L. Bell, Pres., Trustee, Dir.

[Verified.] [17]

[Endorsed]: Filed Nov. 15, 1945. [18]

United States District Court, Southern District of
California

ORDERS OF ADJUDICATION AND OF
GENERAL REFERENCE

At Los Angeles, in said District, on November
19, 1945,

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and

It having been adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number 44-128-WM Title of Proceedings
Christ's Church of The Golden Rule, a corpora-

tion Filed 11-15-45 Referee Benno M. Brink,
Esq., Los Angeles, Calif.

WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed Nov. 19, 1945. [19]

November 9, 1945.

CERTIFIED COPY OF RESOLUTION

Adopted by the Board of Directors of Christ's
Church of the Golden Rule, a Religious, Non-
Profit, California Corporation.

Resolved that, in the judgement of the Board of
Directors, it is desirable and for the best interests
of this corporation, its creditors, its members, and
other interested parties, that a voluntary petition
be filed for and on behalf of said corporation, or
that a consent and request that said corporation be
adjudicated in the Chapter XI proceedings now
pending in the United States District Court for the
Southern District of California, Central Division,
or both, for and on behalf of said corporation, and

It Is Further Resolved that the President or the
Secretary-Treasurer, of this corporation, or either
of them, be and they are hereby authorized and di-
rected on behalf and in the name of this corpora-
tion, to file a voluntary petition in bankruptcy for
and on behalf of the corporation and schedules and

statement of affairs and such other necessary petitions and documents as may, from time to time, be necessary, and/or to consent to and request an adjudication in bankruptcy in that certain proceeding heretofore filed in the United States District Court of the Southern District of California, Central Division, which was filed by this corporation under and pursuant to Section 322 of Chapter XI of the Bankruptcy Act, as amended, or both said proceedings.

It Is Further Resolved that the nature of the proceeding, or proceedings and the time and place of filing shall be left to the discretion of Cobb & Utley and Russell E. Parsons, its attorneys.

The above resolutions are to be effective only in the event that they are carried into execution during the month of November, 1945. Otherwise they are to be of no force and effect.

I hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Directors of said corporation at a duly and regularly called and held meeting of said Directors held on the 9th day of November, 1945, at which all of the directors of said corporation were present and voted; that said resolution appears on the minutes of said meeting and that it has never been revoked or modified.

I also certify that the foregoing resolution was

fully approved by A. L. Bell, Sole Trustee of Christ's Church of the Golden Rule.

In Witness Whereof, I have hereunto set my hand and the seal of the Corporation, this 9th day of November, A.D. 1945.

/s/ A. L. BELL,
Pres. Trustee
Director.

/s/ A. E. KNAPP,
Secretary and Treasurer of Christ's Church of the Golden Rule, a religious, non-profit, California Corporation.

/s/ A. P. NORDSKOTT,
V. P. & Dir. [72]

[Title of District Court and Cause.]

ORDER ON PETITION FOR DISMISSAL
AND ORDER OF ADJUDICATION

The above named Debtor having filed a petition for an arrangement under Section 322, Chapter XI, of the Bankruptcy Act, as amended, and the People of the State of California, through the Attorney General of the State, having filed a petition for an order dismissing the proceedings; and an order to show cause having issued thereon requiring the Debtor and all creditors and other parties in interest to show cause why the prayer of the petition of the People of the State of California should not be granted; and notice having been given to the Debtor, creditors and others as provided in said order to show cause; and the matter having come

on for hearing on November 13, 1945, at the hour of 10 o'clock A.M., before Honorable William C. Mathes, Judge of the above entitled Court, and Russell E. Parsons and Cobb & Utley appearing on behalf of the Debtor, [73] and the petitioner for the order of dismissal being represented by Robert W. Kenny, Attorney General for the State of California, by Warren Olney III, Special Assistant to the Attorney General, and Clarence A. Linn, Deputy Attorney General, and Allen T. Lynch, appearing as Assistant Counsel, and Raphael Dechter and Harry A. Pines appearing on behalf of certain creditors, namely Richard B. Bell of San Francisco, California, N. L. Nagler of Medford, Oregon, and the Estate of Robert Nelson deceased, of Brawley, California, and Carlos S. Hardy appearing for Homesteaders Life Association, a secured creditor; and evidence, both oral and documentary, having been offered and received, and the Debtor having thereupon filed its verified "Request for and Consent to Adjudication" withdrawing the plan of arrangement offered in its original "Petition under Chapter XI (Sec. 322) of the Bankruptcy Act" and voluntarily consenting and requesting that the Debtor be immediately adjudicated a bankrupt, and praying that said plan of arrangement be abandoned and that the Debtor be adjudicated a voluntary bankrupt in accordance with the provisions of the Bankruptcy Act as amended; and the debtor also having then filed its voluntary petition in bankruptcy; and all parties

appearing having stipulated that the petition for an order of dismissal theretofore filed by the People of the State of California should apply with equal force to the Debtor's "Request for and Consent to Adjudication" and to the Debtor's voluntary petition in bankruptcy then on file, and that all evidence theretofore offered and received by the Court in the proceedings should apply with equal force to all pending petitions; and the matter having been argued and submitted and findings of fact and conclusions of law having been waived by all parties, the Court having announced its decision and directed [74] preparation of a written order, now makes the following order:

It Is Hereby Ordered that the motion of the Debtor to refer to a Referee the proceedings under the petition filed November 1, 1945, pursuant to Section 322, Chapter X, of the Bankruptcy Act as amended, be and said motion is hereby denied; and that the Debtor's petition for an injunction filed November 5, 1945, be and said petition is hereby denied, without prejudice to the filing of a later application if so advised; and

It Is Further Ordered, that the order to show cause issued November 7, 1945, on the petition of the People of the State of California for an order dismissing the proceedings under Section 322, Chapter XI, of the Bankruptcy Act as amended, be and said order to show cause is hereby discharged; and that the petition of the People of the State of California be and said petition is hereby denied without prejudice; and

It Is Further Ordered, that the prayer of the Debtor's "Request for and Consent to Adjudication" filed November 15, 1945, be granted, and that the Debtor's petition for an arrangement under Section 322, Chapter XI, of the Bankruptcy Act as amended, be and said petition is hereby denied without prejudice to the right of the Debtor hereafter to file a further petition for an arrangement under Section 321, Chapter XI of the Bankruptcy Act, as amended, if so advised; and

It Is Further Ordered, that the petition of the People of the State of California, submitted as above stated upon oral stipulation of the parties in open Court for an order dismissing the Debtor's "Request for and Consent to Adjudication" and the Debtor's voluntary petition in [75] bankruptcy filed herein November 15, 1945, be and said petition is hereby denied; and

The Debtor having filed its "Request for and Consent to Adjudication" and its voluntary petition in bankruptcy, both praying that the Debtor be adjudicated a bankrupt under the Act of Congress relating to bankruptcy, and said "Request for and Consent to Adjudication" and said petition having been heard and considered, and the application of the People of the State of California for an order dismissing said "Request for and Consent to Adjudication" and said voluntary petition in bankruptcy having been denied;

It is adjudged that the Debtor, Christ's Church of The Golden Rule, a non-profit California cor-

poration, is a bankrupt under the Act of Congress relating to Bankruptcy.

Dated this 19 day of November, 1945.

WM. C. MATHES,

United States District Judge.

Findings of Fact and Conclusions of Law are hereby waived, and the foregoing Order is approved as to form pursuant to Rule 7, this 19th day of November, 1945.

By RUSSELL E. PARSONS and
COBB & UTLEY

By ERNEST R. UTLEY

Attorneys for the Debtor
(Bankrupt)

RAPHAEL DECHTER and
HARRY A. PINES

By HARRY A. PINES

Attorneys for Richard B. Bell, L. N. Nagler, and
the Estate of Robert Nelson, deceased. [76]

CARLOS S. HARDY,

Attorney for Homesteaders Life Association.

ROBERT W. KENNY,

Attorney General of the State of California.

WARREN OLNEY III

Special Assistant to the Attorney General.

CLARENCE A. LINN,

Deputy Attorney General

By ROBT. S. MORRIS, JR.,

Deputy Attorney General

[Endorsed]: Filed Nov. 19, 1945. [77]

United States District Court, Southern District
of California

ORDERS OF ADJUDICATION AND
OF GENERAL REFERENCE

At Los Angeles, in said District, on November 19, 1945, the respective petitions of each of the Petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and

It having been adjudged that each of said Petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number: 44,128-WM. Title of Proceedings.
Filed. Referee. Christ's Church of the Golden

Rule, a corporation. 11-15-45. Benno M. Brink, Esq., Los Angeles, Calif.

WM. C. MATHES,
United States District Judge

[Endorsed]: Filed Nov. 19, 1945. [78]

[Title of District Court and Cause.]

NOTICE OF MOTION TO SET ASIDE
ADJUDICATION

To the trustees in bankruptcy of the above entitled estate and to Grainger & Hunt, Esq., their attorneys:

Will you and each of you please take notice that George Patrick, Mr. Peter Petersen and Mrs. Peter Petersen will at the hour of 10 AM on the 3rd day of November, 1947, or as soon thereafter as counsel can be heard, at the Courtrooms of the Honorable Judge Mathes, Judge of the above-entitled Court in the Federal Building, Temple and Spring Streets, Los Angeles, California move the said Honorable Court for its order setting aside the adjudication in bankruptcy in the above-entitled matter.

Said motion will be made upon the grounds that the bankrupt was at all times and until said adjudication was the temporal agency for the eccles-

iastical organization and religious society of Christ's Church of The Golden Rule, and held all its property under a religious trust for said ecclesiastical and religious society; that the said corporate temporal agency was not a proper subject by itself to be adjudicated a bankrupt; that there was no proper authority or consent for the filing of the voluntary petition for adjudication in bankruptcy, either by the directors of the said corporate temporal agency, or by the ecclesiastical [328] church government, or by any membership; that the consent to the voluntary petition for adjudication by the corporation president was obtained by his misunderstanding of the nature and character of the proceedings and the adjudication prayed; and that the adjudication has been and now is being used as a means and instrument of religious persecution in violation of the Freedom of Religion, First Amendment, United States Constitution, in the following particulars:

a) Until September 30, 1946, the three trustees originally appointed, two professional bankruptcy liquidators and a brewer, none of whom subscribed to the religious teachings of the Church collected all the income and other donations and disbursed and ran all the activities of the religious society including its religious seminary and religious publications;

b) The Trustees in Bankruptcy and the Referee have conducted the affairs of the religious society, and supervised and directed them;

c) The Trustees in Bankruptcy have carried on over a period of months a campaign of entering the private living quarters of the various religious believers and seized without process their personal papers, and impounded all religious writings under keepers, to prevent their use or circulation;

d) The administration has been conducted by a rule of administration known as the "White Case" wherein certain teachings and religious beliefs of the religious society have been condemned as heresy (fraud) for failure to make judicial proof of the truth of such beliefs; and the said "White Case" has been applied so that all who will promptly leave the Church, renounce its teachings under oath as fraudulent and false and its religious leaders as knaves and cheats, will have the return of all property they gave, all property they claim, and compensation for their time spent in the religious work, including compensation for religious instruction; that those who remain "loyal" to their religious [328] beliefs common to those in the religious society are to be brought before the Bankruptcy Court on summary proceedings, stripped of their property by such summary proceedings; that those who will become "Dissenters" amounting to about 5% of the society will be granted enormous claims totalling about \$300,000, which is payable in preference to the claims, rights or status of those remaining "loyal" to said beliefs;

e) That by a policy openly practiced by said bankruptcy administration, said heresy trial

(White Case) is used as a means of religious persecution and discrimination in its application to all those in the above-entitled estate depending upon the classification of religious beliefs "loyal" or "dissenters" for the application of the matters set forth in d) above.

f) That 21a examinations have been used as a means of inquisition and religious persecution in the said administration, and numerous and extensive administration examinations have been conducted as an inquisition against and involving all who remain "loyal" and as a means of determining the religious beliefs of persons suspected of assisting the persons in such religious society.

g) That paid employees, from the religious society's funds held under said religious trust, have been used to harass and annoy those remaining with the religious society and as a means of inducing the individuals to withdraw from said church religious society.

That said motion will be made upon the record, papers and proceedings on file, upon the transcripts and briefs filed in the Patrick and Petersen Reviews, and upon evidence to be introduced at the hearing of said motion.

24 October, 1947.

/s/ HOWARD B. CRITTENDEN, JR.
Attorney for George Patrick, Mr. & Mrs. Peter Petersen.

(Acknowledgment by mail attached.)

[Endorsed]: Filed Oct. 27, 1947.]

[Title of District Court and Cause.]

ANSWER OF TRUSTEES IN BANKRUPTCY
TO MOTION TO SET ASIDE
ADJUDICATION

Now comes Paul W. Sampsell, L. Boteler and McIntyre Faries, the Trustees in Bankruptcy of the Estate of the above named corporation, and for answer to the motion filed by George Patrick, Peter Petersen and Mrs. Peter Petersen to set aside the adjudication in bankruptcy herein made and entered on November 19, 1945, allege and deny as follows:

I.

The statement of facts alleged in said motion is not supported by any affidavit or evidence of any kind, or by any verification, nor by the record of the proceedings in the case in the above entitled court, or in the ancillary bankruptcy courts involved in the above entitled proceeding, viz., the United States District Court for the Southern Division of the Northern District of California and the United States District Court for Oregon.

II.

The said motion fails to state a claim upon which relief can be granted. [330]

III.

None of the proponents of the said motion are parties in interest in connection with any such motion in that none of them are creditors of the estate. The bankrupt corporation does not have any stockholders. It is a religious non-profit corp-

oration organized and existing under California laws.

IV.

The proponents of the said motion are guilty of latches in filing and prosecuting such motion in this: Each of the said proponents has been well aware of the pendency of the bankruptcy case since its inception on November 1, 1945. Since that time, in the course of the administration of the estate, over two million dollars have been received and disbursed by officers of the bankruptcy court, including primary and ancillary receivers and trustees; over 30 sales of real and personal property, principally real property, have been consummated under the supervision of the court of bankruptcy, primary and ancillary; about 27 petitions in reclamation of real and personal property from the possession of such officers have been filed and either determined or are pending; and some reconveyances of real and personal property have been made to the original owners by such officers under the supervision of the bankruptcy court. A vacation of the adjudication would cause inextricable confusion with respect to the titles to such real property and serious financial loss to the purchasers thereof from the bankrupt estate and those to whom such reconveyances were made, all of such persons being innocent parties herein. Furthermore, several millions of dollars of claims against the estate have been filed against the estate by alleged creditors thereof, secured, priority and gen-

eral, some of which have been allowed and some disallowed. (See *Mason v Dean*, CCA, 9, 31F (2) 945, 13 ABR, NS, 771; *Hudebeck v Sanderson*, CCA, 9, 36 ABR 146, 227 F 575; in re [331] *Illinois Fireworks*, D. C., Ill., 22 ABR, NS, 690, 4F, Supp. 200; in re *Farrell*, DC, Pa., 6 ABR, NS 731, 10 F, (2) 612; *Alexander v Farmers* CCA, 5, 47 ABR, 302, 275 F 824; *Dodge v. Kenwood*, AAA, 8, 204 F 577, 29 ABR 586; *affm'g in re Kenwood*, 189 F, 525, 26 ABR 499.

V.

With respect to the allegations of fact set forth in the said motion, deny each and every allegation.

VI.

No lack of jurisdiction of the above entitled court to make the adjudication in bankruptcy herein appears upon the face of the record of this case. Furthermore, most of the allegations of fact set forth in the said motion relate solely to occurrences after the adjudication was made and were not in existence when the adjudication was made.

Wherefore, the said Trustees pray that the said motion be denied and that they be granted general relief, together with their costs.

Dated: November 3, 1947.

GRAINGER & HUNT,
By REUBEN G. HUNT,
Attorneys for Trustees.

(Verified.)

[Endorsed]: Nov. 12, 1947. [332]

[Title of Court and Cause]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Friday, November 14, 1947

Before: Honorable William C. Mathes,
Judge Presiding.

Appearances:

For Movants and

Petitioners: Howard B. Crittenden, Esq.

For Trustees: Reuben G. Hunt, Esq.

For the Bankrupt: Ernest R. Utley, Esq.

The Court: If all interested parties were here ready to proceed.

Mr. Crittenden: Yes, sir.

The Court: Is there objection, gentlemen, to hearing the petitions for review in the Patrick and Petersen matters along with the motion to vacate the adjudication?

Mr. Hunt: I am prepared to go ahead this morning, your Honor.

(Tr. page 3.)

The Court: And the bankrupt, the trustees, petitioners and moving parties are all present.

Mr. Crittenden: That is right, your Honor. I am taking up, first, the motion, your Honor.

Pursuant to a notice of motion which has been continued to this date, the petitioners, Peter Petersen and Mrs. Peter Petersen and George Patrick, in making the motion on the grounds set forth in my motion, which is in essence two separate grounds—one, to set aside the adjudication on the ground of jurisdiction, and the second ground, to set aside the adjudication on the ground of abuse and perversion of the adjudication or administration of the estate which has amounted to a religious persecution under the First Amendment to the United States Constitution.

The Court: I have read your motion and your brief. As to the second ground is there any basis upon which the court can entertain a motion to vacate an adjudication upon the claimed ground that the estate is not being administered properly?

Mr. Crittenden: Yes, your Honor. I filed a memorandum—I apologize that it was not here until this morning—covering that law and served a copy on opposing counsel.

The Court: I have read your memorandum.

Mr. Crittenden: You mean the one I filed this morning?

The Court: Yes, filed on November 14th.

(Tr. page 4.)

Mr. Crittenden: Yes. That is the *Zeitinger v. Hargadine-McKittrick Dry Goods Co.* case, Eight Circuit, 244 Fed. 719; and the *Smith v. Chase National Bank of the City of New York*, Eight Circuit, 84 Fed. 608.

The Court: Well, those were jurisdictional cases,

weren't they, cases that go to the very jurisdiction of the court to adjudicate?

Mr. Crittenden: Your Honor asked me a question. Now I am going to have to answer that. There are two classes of case—one where they have the power to adjudicate and have adjudicated, and the question of administration where the court is asked to carry out some wrongful act which is a misuse of the temple of justice.

As you will recall it—and I believe I can dig some of these cases out on factual grounds—that is directly discussed in the Ninth Circuit case of *McDonough v. Owl Drug Company*, in 75 Fed. (2d) 45; and *In Re Fox West Coast Theatres*, 88 Fed. (2d) 212. Both are Ninth Circuit decisions, and the language in them points out that an attack can be made on that ground, that it is intended to be misuse of the temple.

The Court: That the very filing of the petition itself was a part of the scheme.

Mr. Crittenden: No, no.

The Court: To defraud, and an imposition upon the bankruptcy court; isn't that it?

(Tr. page 5.)

Mr. Crittenden: Maybe I did not make this clear, your Honor. I see your point. If jurisdiction attaches by reason of the person and the subject matter before the court, of course, nothing that takes place after that can divest that jurisdiction.

The Court: No. That is true.

Mr. Crittenden: But they can in the administration so conduct the estate that it does effect

a fraud on the court, such as in the Fox West Coast Theatre case, where they said, "Yes; this is just holding a sale of these properties," or in the Owl Drug case, the Owl drug stores, where they held a sale of the properties. Afterwards, it was used as a fraudulent means or a misuse of the temples of the court.

If this court sees its judgment being used in violation of the First Amendment of the United States Constitution, it is not powerless to sit back and say, "I will permit my orders and my judgment to be misused." So far as that contravenes the United States Constitution that judgment is void, and the moment it is used for that purpose it is the duty upon this court at that moment to stop the administration.

The Court: But have you chosen the proper method here? Anything the referee does can be reviewed by this court; anything this court does can be reviewed by the United States Circuit Court of Appeals; and anything the United States Circuit Court of Appeals does can be reviewed by the Supreme Court of the United States.

(Tr. page 6.)

If the referee has made any improper order in this matter, it is open to review; if this court has made any improper order, it is open to review; if the trustees have abused their offices, isn't the remedy to remove the trustees?

Mr. Crittenden: Well, now, there are lots of ways of killing a cat besides feeding it cream until it dies of kindness; and the remedy of a review is

by no means adequate. A court of equity, which this court sits as, under these circumstances has jurisdiction to hear the substance and to prevent a wrong when it sees it about to take place. And when it sees a course of conduct which I am prepared to prove, I believe, under the circumstances, your Honor would protect this process of this honorable court from abuse and further abuse.

The Court: As I understand your contention from reading your memorandum, it is that two of the trustees have engaged in what you call "religious persecution".

Mr. Crittenden: Very much so; and there were three who did before Mr. Faries.

The Court: The remedy for that, if the trustees are abusing their office is to remove them, isn't it?

Mr. Crittenden: That is only one of them, one remedy.

The Court: It would not be the remedy to vacate the adjudication and upset transactions involving thousands of dollars.

(Tr. page 7.)

Mr. Crittenden: It does not upset any transaction that has taken place in the past. It is only prospective in its action. That which is an abuse of the court's process is not retroactive in its effect. It only stops future administration. That is the very language in the Ninth Circuit decision which I have cited here, that it is prospective in its effects.

The Court: Of course, you are referring to those cases where the bankruptcy proceeding was being used to perpetrate a fraud. The affected parties—

Mr. Crittenden: That is right; being used for improper purposes, which the court will not permit, nor will your Honor permit your process—

The Court: Those were cases where parties besides the trustees were involved. When you criticize the conduct of the trustees you are criticizing the conduct of officers of the court.

Mr. Crittenden: Exactly, and the court, therefore, should not permit that to be done.

The Court: Do you have any case in which the court has vacated adjudication because of an improper conduct of some of the officers of the court?

Mr. Crittenden: Well, that is what all of these are where they have set them aside, because the court holds the sale—

(Tr. page 8.)

The Court: It is the people who put the corporation into bankruptcy who are engaged in perpetrating the fraud in those cases. That is the claim, isn't it?

Mr. Crittenden: The fraud can arise after the adjudication is made and the court will do it.

The Court: Yes. But who are the parties attempting to impose upon the jurisdiction of the court? Are they parties who are officers of the court in any of those cases?

Mr. Crittenden: They have to be, because the court could not act except through its officers.

The Court: Give me the citation where because of misconduct of the trustees an adjudication has been set aside.

Mr. Crittenden: Well, I can go through all the

cases, if you would like me to do it, and take them up one by one.

The Court: That is like burning down the barn in order to roast a pig, isn't it? If the trustees are acting improperly, why should they not be removed and the administration go on?

Mr. Crittenden: The very nature—

The Court: I mean referring only to your second ground. I am not referring to the question of jurisdiction. I want to hear you on the question of jurisdiction. But is there any basis for hearing the second ground at all?

(Tr. page 9.)

Mr. Crittenden: Yes. And I will say this: That the very nature of the church and religious society is such that when its affairs are undertaken to be administered by the bankruptcy court—and your Honor knows as well as I do—you practiced law here a good number of years—in what repute the administration of bankruptcy stands. And they go out and they use a strong hand on that group and they say, "Come into the court and we will hold our hearings in here." And you know just how that is done. It is not at all moderate, nor are the 21-A examinations or inquisitions—

The Court: Just a moment, just a moment. You say that Trustee Faries is acting properly as a trustee. It is only the other two trustees who acted improperly?

Mr. Crittenden: He interceded on my behalf to stop some of this, and particularly the proceedings in San Francisco, and he was unsuccessful.

The Court: So on your second ground the claim is that two trustees are not acting properly; they are abusing their office; isn't that the claim?

Mr. Crittenden: May I put it this way: The administration, even with a man like Faries attempting to be the opposition, has been unsuccessful; and if a man like Faries is unsuccessful, certainly that is showing that this type of administration of the bankruptcy court when applied to the religious society just does not go together any more than gasoline and a match go together.

(Tr. page 10.)

The Court: Let me ask you this: If you had three trustees like Faries, you would feel you were all right, wouldn't you, or would you still think the adjudication should be set aside upon the second ground?

Mr. Crittenden: Well, I would even go this far, to say that the existence of the inquisition that is carried on under 21 A and the opportunities that are there presented for an inquisition, which, by the way, your Honor, is copied after the same Roman jurisprudence that the inquisition of the famous Spanish inquisition is copied from, and carried on in the same way, is used in the court. I speak with a little authority on this—

The Court: They do not use the rack down there, do they?

Mr. Crittenden: Well, I don't know. It looks like it and I could even view the tormentor.

Now, your Honor, could I point this out as to

the Roman type of jurisprudence? I sat, as your Honor does—

The Court: I am not going to hear you on that, because the head of this church and his wife sat on the witness stand in this court and not fewer than a dozen times claimed the privilege and stood on the privilege of refusing to testify, because the questions called for answers which might tend to incriminate or degrade them. That was their constitutional privilege and they stood on it.

(Tr. page 11.)

Mr. Crittenden: That is right.

The Court: Has there been any abuse of that before the referee?

Mr. Crittenden: He called these people in and asked them their religious beliefs at the present moment, and not less than two weeks ago.

The Court: Why did you not seek to review the order?

Mr. Crittenden: I can't do it until there is an order to review. We have to go through the inquisition. Mr. Hunt asked Mr. Petersen his present religious convictions as of the time he was sitting on the stand, before a referee in bankruptcy—certainly a religious inquisition if there ever were one, under 21J of the Bankruptcy Act.

Now, if you want to know a clearer case of religious inquisition, I would like to know what it is. If your Honor could bring people in and ask them their religious beliefs and apply the law, apply it according to the religious beliefs, I think all idea of religious freedom is gone.

The Court: Who is applying the law according to religious beliefs?

Mr. Crittenden: That is what our record shows. It is one of our grounds here.

The Court: Who is doing it?

(Tr. page 12.)

Mr. Crittenden: The referee.

The Court: All right. Why didn't you petition to review his order?

Mr. Crittenden: We did, but we have to go ahead with the inquisition. And, by the way, the costs of records are not cheap and it is a lot of work. And a lawyer who has an active practice, to prepare and travel and do all of this along with it, it is a tremendous load, not upon one counsel, but several counsel.

The Court: That is the first time I ever heard the indisposition or the business of the lawyers as a ground for vacating an adjudication in bankruptcy.

Mr. Crittenden: I daresay that if you use it as a rack or have your tormentor there to inquire of this man and put him through the inquisitorial method of the Roman law, certainly the man has no remedy until he reviews it, for damages done. The man who has been on the rack has no remedy to come and say, now that it is over, I want to be told that I didn't have a right to go through that.

The Court: Oh, no. He has a better remedy than that. If the question is manifestly improper, violates his constitutional rights, why, he may stand upon those and refuse to answer.

Mr. Crittenden: Let us take another question just to show you what has happened. The trustees hired two or three private detectives; they go through the personal and private papers of every individual of a certain religious belief, those who are loyal to this society, ransack them, then they take them, and so they bring them in.

(Tr. page 13.)

The Court: Just a moment. There is one of the great troubles of this whole case, the loose language, this thing of calling certain people "loyalists" and certain people "dissenters".

Mr. Crittenden: I agree with your Honor.

The Court: It is puerile, from my point of view. The people who are dissenters are the people who sought to rescind their transaction whereby they gave this property to the church; isn't that correct?

Mr. Crittenden: May I say this?

The Court: Is that correct?

Mr. Crittenden: Those who have denounced their religious beliefs and their religious leaders.

The Court: All right. Are there any dissenters who denounced their religious beliefs who are trying to get their property back?

Mr. Crittenden: I haven't heard of a one of them.

The Court: No. So it is just mixing up a lot of religious belief with property rights, and here we are concerned with property rights.

Mr. Crittenden: We are concerned here, your Honor, with the constitutional right of a man to

freedom of religion, and we will be as long as that First Amendment is in the Constitution.

(Tr. page 14.)

The Court: That is a nice speech, but what does that have to do with this bankruptcy?

Mr. Crittenden: That is why you are hearing the matter here at this very time. I want to show that these trustees put in a —

The Court: You make a motion to remove the trustees if you want to.

Mr. Crittenden: I will amend it to include that, your Honor.

The Court: I am not going to hear that this morning. I will hear you on the question of jurisdiction. But as far as the second ground is concerned, to my mind it is not a basis to remove the trustees.

Mr. Crittenden: May I say this, your Honor?

The Court: No affidavits here in support of it.

Mr. Crittenden: I understand the motion is to be made by proving these facts, and we will ascertain the facts and show —

The Court: All right; you make an offer of proof and I will rule on it.

Mr. Crittenden: All right.

The Court: This is on your second ground.

(Tr. page 15.)

Mr. Crittenden: This is on my second ground.

I want to prove that on August 19 of 1946, the trustees by paid detectives went to the Homesteaders Building; they seized and went through the personal effects of the parties and took their per-

sonal and religious literature and papers, and took them and seized them and impounded them.

That they went to Oregon and they seized some papers up there by searching the places. They did the same thing in other places and took them and moved them to Los Angeles. Subsequently they were demanded and returned. The seizure took place.

There was no process except a subpoena duces tecum issued by this court, without an affidavit, commanding the trustees to produce certain papers for a hearing which was never held.

I also want to show on this proof that the trustees hired third parties at wages as full timekeepers, who sat in the Homesteaders Building and who took all of the religious literature and refused to release any part of it, and as far as any current stuff—this is after bankruptcy—that was up until Christmastime of 1946, held this religious literature, even to the publications coming out and even as to current legal papers which these parties had to protect their rights, were seized and held by the trustees in bankruptcy.

(Tr. page 16.)

The Court: What was the literature doing in the Homesteaders Building?

Mr. Crittenden: They lived there.

The Court: What were the people doing in the Homesteaders Building?

Mr. Crittenden: Carrying on religious work.

The Court: Were they paying rent?

Mr. Crittenden: Yes.

The Court: Rent?

Mr. Crittenden: Yes.

The Court: What—money rent?

Mr. Crittenden: Yes.

The Court: To whom?

Mr. Crittenden: The trustees.

The Court: Do you make that as a representation?

Mr. Crittenden: I understand that there was money paid.

The Court: Do you know it to be a fact? I ask you a question as a fact.

Mr. Crittenden: Now, let me get it. I understand they were paying power, light and upkeep.

The Court: They are living there rent free, aren't they?

Mr. Crittenden: No.

The Court: Other than that?

Mr. Crittenden: No. I think, under the decisions cited here, that the beneficial enjoyment—

(Tr. page 17.)

The Court: I am asking you are they paying any money rent?

Mr. Crittenden: Well, not to the trustees in bankruptcy, as rent; no.

The Court: Are they paying anything to the trustees in bankruptcy?

Mr. Crittenden: They are paying the lights and they are paying—I can't make a representation as to how much more besides utility bills and the upkeep of the premises.

Now, I am going to that point, your Honor.

The Court: All right; proceed with your offer.

Mr. Crittenden: All right. That the trustees in bankruptcy put these keepers in there, took the religious literature and held it and kept it from being distributed; and that they put a keeper at the seminary in San Francisco and there kept literature from going out and being circulated.

As to the next point, I have my witnesses here to prove that there have been almost daily, at least for the first year and a half, inquisitions under 21A and 21J, and even some up to the present time, being carried on in the bankruptcy court; and it is almost entirely those who are loyal members who are subjected to that.

The Court: By "loyal members" you mean people who filed claims?

Mr. Crittenden: No.

(Tr. page 18.)

The Court: That they have not rescinded their transactions or attempted to?

Mr. Crittenden: No, those who have religious beliefs in the society.

The Court: Let me ask you this: Are there any loyal members, so-called, who have not attempted to rescind their transactions with the church?

Mr. Crittenden: I think everyone has attempted to rescind their transactions exactly on the same grounds as the others.

The Court: Those are the dissenters, aren't they?

Mr. Crittenden: No; the loyalists.

The Court: In other words, they are so-called

loyal members who have attempted to rescind their transactions with the church?

Mr. Crittenden: Yes. Yes, so far as I know, everyone has.

The Court: And get back their property?

Mr. Crittenden: What?

The Court: And get back their property?

Mr. Crittenden: Yes.

The Court: What is the difference between this proceeding of the so-called loyalists and the so-called dissenters?

Mr. Crittenden: Religious beliefs, your Honor.
(Tr. page 19.)

The Court: Well, I don't want to hear any more of it, then, if that is the only difference between the two groups. I don't want anyone else to mention those groups in this court even.

Mr. Crittenden: Insofar as that goes—

The Court: I said I do not want to hear it. You understand me.

Mr. Crittenden: —I am going to plead the constitutional rights of my clients in this court. If I do not, I will do it in the higher court.

The Court: You do it here if your wish, but I do not want any distinction.

Mr. Crittenden: It is used on the religious basis. I want to show it is used as religious discrimination.

The Court: That is no distinction.

Mr. Crittenden: If it is followed and applied, it is certainly entitled to redress in this court; if not in this, in the Ninth Circuit; and if not in the

Ninth Circuit, in the Supreme Court of the United States.

The Court: I want to show that these proceedings by 21 A and 21J has been almost exclusively to those who held the religious beliefs of the society, and those who had denounced it were the ones who were not brought in. A distinction was made in the application of these remedies by religious beliefs.

(Tr. page 20.)

Secondly, I want to show—

The Court: Who brought them in, the trustees?

Mr. Crittenden: Yes. I also want to show that these summary proceedings in line with this religious persecution, religious distinction and religious beliefs were applied to those of certain religious beliefs and not applied to those in the same factual situation because they had denounced their religious beliefs.

And I will show, your Honor, as I proceed here, the very statements of counsel that are based solely upon religious beliefs that these remedies are applied.

It is very unusual to have as strong a case as that.

I also want to show—

The Court: You propose to show that the only difference between these two so-called groups is wholly religious beliefs; that there is no difference in their relationships to the property of the church at all?

Mr. Crittenden: Your honor, it is extremely difficult in an offer of proof—

The Court: Just answer me.

Mr. Crittenden: Yes; I have the proof.

The Court: All right. Proceed with your case.

Mr. Crittenden: I want to show that the trustees up until the time Mr. Faries was substituted for Mr. McKee was run by two professional bankruptcy liquidators, and a man runs—

The Court: You know that does not have anything to do with it.

Mr. Crittenden: Yes, it does. None of them have any religious sympathy with this organization.

The Court: Is that one of the qualifications of the trustees, that they have religious sympathy?

Mr. Crittenden: I will show you plenty of decisions that say they should have, a receiver or anybody in there. Even *Watson v. Jones* has that point, that nothing shall be done to interfere with the religious uses of the property.

The Court: Proceed.

Mr. Crittenden: I want to show that these men have not been in sympathy, and that one of the counsel here has made derogatory remarks about religious teaching to some of the leaders of this religious organization, expressly as to the religious teachings.

I want to show here that these trustees have carried on an administration—

The Court: By “these trustees” do you include Faries?

Mr. Crittenden: Well, he has been outvoted, I understand, on all these matters I am discussing.

The Court: I say, do you include Faries or do you mean only the two?

Mr. Crittenden: As far as the carrying on of the money, my record only goes up to the middle of 1947, and that is when he took office.

(Tr. page 22.)

The Court: I just want the record to be clear.

Mr. Crittenden: Yes, sir.

The Court: As to what you mean. You mean all three trustees?

Mr. Crittenden: Up to the middle of 1947 I have the estate status as to 1947, as prepared by one of the church affiliates here, from the record of which your Honor takes judicial notice, showing an estate starting out with about \$2,600,000 as initial inventory, and actual cash expenditures of \$2,207,936.38, as shown by the reports of the trustees themselves; costs of administration, attorneys fees, salaries, overhead and such charges as that amounted to \$277,089.09; and that the estate has wasted down to approximately \$661,000 of value.

I understand there have been some sales since Mr. Faries has taken office. This was before he took office. And there is probably—I think the cash balance shows around three to four hundred thousand dollars. I even got that in the statement here.

That the actual allowed claims of general creditors is \$111,364.79 as shown by the records of this court, and not one cent of dividend has ever been

paid, nor is there any indication that it will be paid until the trustees are through with the handling of their tax matters.

(Tr. page 23.)

Now, I want to draw this to your Honor's attention: In this very court room Mr. Hunt sat over here, speaking—

The Court: You are making an offer of proof. Let us go ahead with the offer of proof.

Mr. Crittenden: Eight hundred some thousand dollars, 900,000 of taxes, and the only way it was ever settled was that the general counsel of the Treasury Department came in here and offered \$125,000 to make settlement, and I understand it finally reached \$130,000 plus interest.

The Court: He never made any offer in this court. He said he was going to recommend.

Mr. Crittenden: Recommend, that is what I mean. He recommended settlement. In other words, the figure originated from him, the basis of settlement originated with the general counsel.

But all of this time, for two years, no real bona fide effort has been made to apply Chapter—correction—Tax Act, Section 101, Subdivision (6) or Subdivision (18), both of which exempt the corporation from taxation. No bona fide or any effort under Subdivision (18) which is applicable to apostolic societies, which this religious society is organized and conducted as, which is exempt under the Act.

In addition, there has been no effort to fight or set aside the claim of the State's taxes and unem-

ployment insurance on the ground of the Federal Court decision in the case of Israelite House of David, which holds that an apostolic society is not subject to tax for want of employer-employee or master and servant relationship; and that that tax matter has now gone for a year and a half, almost two years, and it still is unsettled as far as the State matters are concerned, and it will remain that way and interest commence to run as long as these who are administering the estate continue it. I want to show that, your Honor.

(Tr. page 24.)

I also want to show that the trustees solicited donations by going to these various people who are on projects, and who said, "We will close up this place lock, stock and barrel," or words to that effect—we will close up your church and everything with it that you leave to your church; and I have in the record, which I will read into the record in a moment, and make an offer of proof of the very statement and the answer which followed in open court.

Now I am going to start in on the records we have of the transcripts.

The Court: You just make your offer of what you expect to prove and I will rule on it. I do not want you to read any voluminous transcript in connection with your offer.

Mr. Crittenden: All right.

The Court: Just tell me the facts you propose

to prove in support of the second ground of your motion.

(Tr. page 25.)

Mr. Crittenden: On the White case decision of Referee Brink, a transcript of the reporter, August 8, 1946, haec verba, which is before your Honor, at page 29, line 2, quoting:

“Now it is true there is not any evidence here of the falsity of anything in Mankind United;”—

The Court: I have read all of that.

Mr. Crittenden: Well, I have to read it to make an offer of proof, your Honor.

The Court: Do you want to make as a part of your offer of proof the record in the White case?

Mr. Crittenden: No; just these decisions.

The Court: The remarks of the Referee in deciding the White case?

Mr. Crittenden: I have set them out.

The Court: Very well; they will be deemed copied as part of your offer of proof.

Mr. Crittenden: All right.

The Court: Where are they in your brief, now?

Mr. Crittenden: Page 13, paragraph I.

The Court: Very well.

Mr. Crittenden: There is a quotation from page 29, page 4, page 46, page 40, and page 41.

The Court: All of those may be copied into the record at this juncture and may be deemed a part of your offer of proof. That is from line 16, page 13 of your brief, to line 15, page 14, is that correct?

(Tr. Page 26)

Mr. Crittenden: Yes; line 14, page 14.

(The matter above referred to is copied into the record in the words and figures as follows:)

“The ‘White Case Decision’ of Referee Brink, Reporter’s Transcript August 8, 1946 (set forth in Patrick’s Answer). Page 29, line 2: ‘Now it is true there is not any evidence here of the falsity of anything in Mankind United; on the other hand there is no evidence here of the truth of the assertions that are made in Mankind United, particularly as to the assertion that this movement was sponsored by a group which traced its existence ’way back to 1875. The reason I make the finding that the statement as to this movement’s being an organization or a group is not true is because, as I see it, the Petitioners here have no way of proving the falsity of the things that are set forth in Mankind United. Mr. Bell is the only one in possession of the necessary information or who would be able to produce evidence here that things said in ‘Mankind United’ are true, particularly that this was or is a group movement or an organization.

“Page 4, line 26: ‘The Respondents in the Petition in Reclamation are, of course the Trustees. So

(Tr. Page 27)

the parties to the Petition in reclamation are, on the other hand, Mr. and Mrs. White and, on the other hand, the Trustees in Bankruptcy in this proceeding. The bankrupt corporation, through its counsel, has actively participated in this hearing in what we have come to call the ‘White case.’ Technically, however, the bankrupt corporation does not appear to be a party to the proceeding. Likewise on

the objection to the claim; the objectors are the Trustees. The Claimants, who are the Respondents, it may be said, on the objections, are Mr. and Mrs. White . . .

“Page 46, line 22: ‘So the claim and contention here that only 40 people are members certainly is not in accordance with the principles of the Golden Rule. Here is a movement, it is said, filled with fraud and deceit and untruth. And my finding is that the Whites have been defrauded by the very manner in which the movement has been operated.

“Page 40, line 11: ‘Mr. Bell has offered no proof that there were any organization of any sponsors or any other person promoting this movement than himself. And again, as already remarked, no one else could disprove these statements. Mr. Bell alone could prove them, and he alone knew the facts. The fact that he produced no evidence or even made any

(Tr. Page 28)

attempt to do so proves the falsity of the representations with respect to the existence of some kind of an organization. These representations were fraudulent and unquestionably were made with the intent to deceive. The Whites had a right to rely on these representations. The Referee finds they did rely on them and that they were defrauded and deceived. This remedy of course belongs exclusively to the Whites and is not a remedy that the trustees could assert.

“Page 41, line 16: ‘There is no evidence whatsoever here that any program ever existed. Again

nobody is in a position here to disprove it. If it existed, Mr. Bell can prove it. He failed even to try to do so. The fact that Mr. Bell produced no evidence or even attempted to do so proves the falsity of the representations with respect to the existence of his program. The representations were fraudulent and were made with the intent to deceive, for they were made with the intent to persuade Mr. and Mrs. White and others to join this movement. The Whites had a right to rely on these representations. They did rely, and were defrauded and deceived. The remedy in this action and on this point of course belongs to the Whites and not to the Trustees."

(Tr. Page 29)

Mr. Crittenden: In my memorandum, on page 15, copy from the Petersen Transcript of March 20, 1947.

The Court: That will be deemed a part of your offer of proof, page 15, line 25, down through line 25 on page 16; is that correct?

Mr. Crittenden: That is correct.

The Court: That will be copied.

(The matter above referred to is copied into the record in the words and figures as follows:)

"Petersen Record Transcript. March 20, 1947, 10 A.M.:

"Pg. 102, Line 4: 'The Referee: All right. Now as to the matters that are on the calendar this morning—take the Petersen matter, for instance—if it is stipulated by the Trustees and by the Petersens, through their counsel, that the disposition of the

Petersen matter shall follow the final disposition of the White case, then we need have no further proceedings.

“ ‘Mr. Martin: If I understand the Trustees’ policy, your Honor, we can not stipulate because of the fact that there is a refusal on the part of the Petitioners—no, I mean the Respondents—in the matter to recognize or admit or state that they have withdrawn from the corporate body—or the “ecclesiastical” body, as Judge Preston likes to point out. The policy of the Trustees as to the loyal members is to make them prove their case. They are still loyal. They have not withdrawn or rescinded. Therefore there is no basis for fraud or otherwise.

(Tr. Page 30)

“The Referee: Then the Petersen matter will have to go forward; and if the same situation applies in the Moyer matter, that will have to go forward and also the Miller matter.

“Mr. Preston: If your Honor please, when we get around to this Miller and auto matter, I have a few remarks to make. The Court has already ruled or announced its ruling, or announced its conclusion at least in the Miller matter, to this extent, that, not having severed their connection with the Church organization by withdrawal or otherwise, they are not in a position to contest the title to this ranch, rabbitry, on that ground. . .

“Page 116, line 13: Mr. Martin: . . . ‘Mr. Petersen has not rescinded his relationship with the Church. He sits here, an active participant in the

Church group, and at the same time says that he has been defrauded.

“Patrick Transcript, December 12, 1946:

“Page Pg. 78, line 1: ‘The Referee: Mr. Crittenden is going into the White case; is that right?

“Mr. Hunt: That is the way it looks to me.

“The Referee: What do you want to do about it? Do you want to stipulate or not stipulate?

“Mr. Hunt: I do not think that in the case of the loyal members we want to stipulate to anything.

“Pg. 88, line 22: ‘The Referee However, this brings us squarely to a question in this case which must be decided. The Trustees in Bankruptcy have taken the position with reference to all Petitioners in the reclamation who have definitely severed their connection with Christ’s Church of the Golden Rule that the final decision in the White case shall govern such petitions in the reclamation. At least so far that has been the attitude of the Trustees in Bankruptcy. Is that correct, Mr. Hunt?

“Mr. Hunt: I am not handling that branch of the case, but your Honor knows. That must be right.

“Pg. 107, line 10: ‘Mr. Crittenden: . . . I heard in this case, in this courtroom, a woman recover her automobile on the White case, without even a petition, because it was small.

“Mr. Hunt: That is not correct.

“Mr. Crittenden: Your Honor knows that is a fact.

“Mr. Hunt: Just a moment. The reason his Honor made that decision was this: She positively

testified to my mind that the pink slip and the white slip were fraudulently obtained from her upon promises at the time and she promptly disassociated herself from the Church. Your Honor applied the White Case because she did promptly disassociate herself from the Church and all the people connected with it.”

Mr. Crittenden: I want to draw your Honor’s attention to the statement at the end of the quotation made by Mr. Hunt:

“Just a moment. The reason his Honor made that decision was this:” —

The Court: I read that this morning. I read it before coming on the bench.

Mr. Crittenden: I also want to draw your Honor’s attention to the statement of Mr. Martin that it is a policy of the Trustees that “we cannot stipulate because of the fact that there is a refusal on the part of the Petitioners—no, I mean the respondents—in the matter to recognize or admit or state that they have withdrawn from the corporate body—or the ‘ecclesiastical’ body, as Judge Preston likes to point out.”

You will notice that.

And then I want to read into the record a portion of a transcript of May 17, 1946 before Referee Brink in this case, which came before your Honor and then went to the Ninth Circuit Court of Appeals, where the Ninth Circuit held that Mr. Bell was within his right to accept personal gifts of monies received after the bankruptcy. And I will start on page 117, the last two paragraphs.

(Tr. Page 33)

“Q. By Mr. Olney: Mr. Bell, I understand that you have testified that since the date of bankruptcy members of Christ’s Church of the Golden Rule have remitted to you certain moneys by way of gift?

“A. I don’t know whether members of the Church have done so or not.

“(Testimony of Arthur L. Bell)

“Q. Well, did I not understand you to say—

“A. They might have. I just don’t remember them having done so.

“Q. —that the Corporation had passed a resolution authorizing these members to obtain employment on the outside and remit funds to you?

“A. The resolution releasing them from their obligations of donating their services and their moneys and any inheritances that they might obtain to the Church until the bankrupt proceedings were through.

“The Referee: Wait a minute. I want to get this clear. What do you say, Mr. Bell?

“A. You Honor, I am saying that the by-laws had been amended—I don’t recall the date now, the Minute book will show—have been amended, releas-

(Tr. Page 34)

ing the individual applicants from their obligations to donate—they could if they wished, but their obligations to donate—their time and their efforts or the revenue from their efforts or any inheritances or anything they might acquire to the Church after the time that we have gotten into our litigation

with the State. In other words, our people, since the State claimed we had no Church and had no right to a Church—our people had to be released from any of the obligations to that Church other than what they might voluntarily desire to yield to the Church. And hundreds of them have been devoting their full time to the Church, gladly doing so. There are those who have felt very much incensed over this attack upon us from the State, and they have desired to go their own separate way and they have done so. And under our By-laws and Charter we have a perfect right to adjust the minutes that pertained to ecclesiastical matters, obligations of the members of the Church and its teachings. And in accordance with instructions to our attorneys an amendment of the By-laws was drawn.

“Q. By Mr. Olney: This amendment of the By-laws and the resolution were passed by whom?

(Tr. Page 35)

“A. In accordance with the Church and the By-laws they were passed by the directors.

“Q. The directors of the Bankrupt?

“A. Of the Church.

“Q. The Bankrupt?

“A. The ecclesiastical body. We consider them as such anyway. In other words, we thought this bankruptcy proceeding had no interference with the matters pertaining to our teachings or the obligations of our people to those teachings.

“Q. Mr. Bell, who passed the resolution that changed the By-laws?

“A. Those who constitute the spiritual leadership of this Church.

“The Referee: Q. Gives us the names, Mr. Bell. Who did it?

“A. Miss Nordskott, Miss Knapp, and myself.

“The Referee: Is it in that Minute book there Mr. Olney?

“Mr. Olney: If the court please, I will get it.

“The Referee: If you have it, don't ask any questions. Who did it?

“Mr. Olney: Sir, I do not have it.

“The Referee: I asked you whether it was in that Minute Book. Is it or is it not?

(Tr. Page 36)

“Mr. Olney: My information is that it is not. I have not examined it.

“The Referee: Look and see.

“Mr. Olney: May I ask a question of the witness, your Honor?

“The Referee: Yes.

“Mr. Martin: When did you pass this resolution, Mr. Bell?

“A. It was first discussed in August or September of 1945, agreed upon then, put into final form whenever the date of the resolution may be. I don't know the date of the resolution at this moment.

“Q. What is your best recollection?

“A. I don't care to guess on it. Since you have the Minute Book, Mr. Martin, I would like to have you present it.

“Q. By Mr. Olney: Mr. Bell, I understand you

to say it was passed after the filing of bankruptcy in November, 1945.

“A. It was discussed in August or September, when we felt there might be an attack on our Corporation.

“Q. This is a copy of the Minute Book. I will ask you to point out any such resolution.

“I might state, if the Court please, that I examined it just now from the cover to the end of the book and there is no such resolution in there.

(Tr. Page 37)

“The Referee: Well, I should like to have counsel for the Bankrupt Corporation know that the Court regards this as a very serious situation. The Court has been under the impression that the Trustees were continuing the business of the Corporation as it existed at the time of the filing of the Petition in Bankruptcy. Now if the officers of this Corporation have changed that situation, then there is a very serious question of whether or not the Trustees are going to continue the business of the Corporation or whether the Court will permit the Trustees to continue the business of the Corporation.

“Mr. Utley: If the court please—

“The Referee: Just a second. I want to explain to you the problem so that you may explain it to your client. We have assumed that the Trustees were continuing to receive the same revenue from the business of this Corporation as the Corporation itself received—at least before the appointment of the State Court Receiver. If that is not the fact, then I doubt very much whether this Court will con-

tinue the authorization of the Trustees to operate this business, particularly in view of the figures disclosed by the audit of Arthur Young and Company in this court room this morning, that it is going to cost us from now on some \$18,000 a month to continue this operation. If there are any finances diverted by any action of Mr. Bell or his associates, then I think the trustees are going to have to close up lock, stock, and barrel." That is the end of that quotation.

(Tr. Page 38)

I also want to prove that the Trustees in Bankruptcy collected all the donations that the society had, from their appointment until the 30th day of September, 1946, which your Honor very wisely stopped that practice; that they ran a seminary in San Francisco, a religious seminary; they carried on the religious work of the society, the trustees in bankruptcy, this honorable court's agency, carried on the religious activity; that they solicited the donations; they put on the mantle of the church and went forth, literally shook the tambourine, and when they did make donations, as in Petersen's case, they retained all those amounts of money of his own earnings from his own business and services and his wife's services, and they impounded all those and said, "You can't have them."

The Court: Do you mean by that, that members of the church who made contributions to the bankrupt corporation since bankruptcy?

(Tr. Page 39)

Mr. Crittenden: Indeed I do.

The Court: Of money?

Mr. Crittenden: Of money.

The Court: To what extent?

Mr. Crittenden: Now that is a debatable point. For instance, in the Papenhausen case in which I made an examination it must have run about a thousand dollars a month.

The Court: You mean voluntary gifts?

Mr. Crittenden: It was not quite voluntary.

The Court: What are the facts? I am asking you.

Mr. Crittenden: The facts are that the trustees said: If you want your church to exist and don't want it ended, you have to give us all the money out of your business. Papenhausen* did it.

The Court: You are referring to the proceeds of the project; is that what you mean?

Mr. Crittenden: And services.

The Court: So-called project?

Mr. Crittenden: They went to Nellie Fitzgerald (?),** a real estate broker, and they took all of her commissions, or they said we will close up the church, and they collected it from her. They could not conduct the business of a real estate brokerage firm because they had no license to do it. Women will do a lot of things for a church, your Honor. I want to prove that, too.

*Written in pencil on original

**Should be Paget

(Tr. Page 40)

I want to show that they actually went out and solicited all kinds of contributions. I will show you in this record, if you wish me to go further, where

they wanted and they required Mr. Bell to account for all gifts received, because they say they owned all gifts that were made of any sort to any official of the church. And that is the essence of this record before the Ninth Circuit.

If you want to hear me on the rest of it, I will certainly be glad to do it. Here is the very holding. Let me read a little further, and this is just from where I stopped:

“The Witness: Not a dollar of the funds—

“The Referee: Just a minute, sir. I am talking to your attorney.

“Mr. Utley: Mr. Cobb, I think, handled some of the matters that Mr. Bell is now discussing. But here is the problem, your Honor. As your Honor knows, we are disposing of these properties where certain members have been working. And that would require certain members to become idle from time to time. The problem arose as to what to do with the surplus of labor.

“The Referee: Yes?

“Mr. Utley: Now I am— as I say, I am discussing this and I am not entirely familiar with it myself. But the question arose as to whether or not these particular members who were no longer needed to operate the property of the Church should be released and those who wanted to, go out and seek employment in other fields. And they would neither be maintained by the Church nor would they be obligated to turn their revenue over to the Church.

(Tr. Page 41)

“The Referee: Yes?

“Mr. Utley: That is the situation which we have been considering all along. And I think it is going to come to that point more and more, as some of these properties are closed.

“The Referee: I appreciate that; but Mr. Bell tells us he is getting money now from envelopes and people. My impression was that Mr. Bell was a member of Christ’s Church of The Golden Rule. My impression was that members of Christ’s Church of The Golden Rule surrendered all their property to the Church. Just how he continues to get money and use it as he pleases when he is a member of Christ’s Church of The Golden Rule of course is not immediately apparent. Maybe there is a good explanation for it.”

Do you see what I mean? The court and the referee and all down there decide that anything any of these people earned or received commercially, until your Honor made that order of September 30, 1946, was their property to do with as they saw fit, to seize, to grab, to restrain, and bring them in and interrogate them under a 21A or 21J examination. I have never heard of a thing like this and I don’t know how long—

The Court: Proceed with your offer of proof, Mr. Crittenden. This is no place for argument.

Mr. Crittenden: What?

The Court: This is no time for argument. Proceed with your offer of proof.

Mr. Crittenden: (Reading)

“Mr. Utley: I think you will find there is. Certainly if a member of the Church was not main-

tained and supported any longer by the Church and it was subsequent to bankruptcy and he went out and secured him an independent job, he could do with his money as he pleased. It would be no part of the assets of this Corporation.

“The Referee: Have we got any people living on this property on Figueroa Street that are out working anywhere?

“Mr. Utley: Not that I know about.

“The Referee: What are those people doing up there? Are they just sitting there doing nothing?

(Tr. Page 43)

“Mr. Utley: You will have to ask Mr. Bell.

“The Referee: There is no use getting into an extended discussion of it. We have already set June 4, 1946, as the date for a hearing on what the Trustees are going to do with this membership setup. But if the Court in the meantime should be satisfied that there has not been turned over to the Trustees the business of this Corporation as it was in existence at the time of the commencement of the bankruptcy proceeding, the Court in the meantime may make an Order instructing the Trustees to discontinue the operation of this business, because I am not going to permit the Trustees to carry on, even until June 4th, this tremendous expense of maintaining these people, including the expense of some \$10,000.00 a month for this institution in San Francisco, if I have any reason to believe that any money which should belong to this Corporation is being diverted or is being—

“Mr. Utley: I have understood and I have told

Mr. Bell that that could not be done. I did tell him, however, that if the Corporation released the members from their obligation of contributing everything to the Church and the Church no longer supported them and they got out and worked on their own, it was their own business what they did with their money.

(Tr. Page 44)

“The Referee: But we are not going to feed them.

“Mr. Utley: I gave Mr. Bell to understand that we would not feed them, and I do not understand that we are.

“The Referee: We are not going to feed them, and we are not going to let them live—

“Mr. Martin: If the Court please, I am clearly under the impression that at Silver Avenue we have over two hundred people supported by the Trustees, many of whom are engaged in outside labor.

“The Referee: For compensation?

“Mr. Martin: So I understand.

“Mr. Bell: Not one dollar of the Trustees' money has gone for the support of those people, not a dollar. The auditors can verify that fact. If they are carrying on their school work and their studies, they live where they have always lived. They pay \$7.50 a week or they bring in food to the college. They do not take a dollar of this estate. And there has not been a dollar of any project that has not gone to the Trustees of this estate, not a dollar.

(Tr. Page 45)

“The Referee: Maybe one of these days I will have to get on a plane and go to San Francisco and go to that institution and myself find out how it is being run. You say they are paying \$7.50 a week. Do you realize it is costing us \$10,000.00 a month to run that institution there? That is \$50.00 per month per person. If there are two hundred people and your employees are only paying \$7.50 per week, they are not paying enough money.

“The Witness: That covers training and instruction and literature. The food costs are less than \$25.00 a month your Honor.

“The Referee: I don’t care what the food costs are. I am looking at the total bill up there.

“The Witness: They are paying their share of their living expenses, your Honor. It has been carefully calculated. Wherever they live and are carrying on their training, they are paying their share.

“The Referee: Whom are they paying it to, this \$7.50 a week?

“The Witness: To the project—or bringing in food, one or the other. I don’t know how it is handled.

“The Referee: How?

(Tr. Page 46)

“The Witness: Either paying it to the project or bringing in food.

“The Referee: Does any one have that auditor’s report of this morning? My impression was that the Seminary was a dead loss; that there was no income coming in from it.

“Mr. Martin: I do not have the auditor’s report. On that point, however, it clearly is a dead accounting loss. We always put it—

“The Referee: I mean that there was no revenue at all on it.

“Mr. Martin: That I can not verify for the Court; I don’t know.

“The Referee: All right, gentlemen, I am sorry to interrupt you, Mr. Olney; but I want counsel to understand the seriousness of this situation here. Go ahead. And that is why, counsel, if this institution is going to be preserved there must be the utmost frankness with the Trustees and this Court on the part of everybody that has anything at all to do with it, including Mr. Bell.

“Mr. Utley: Your Honor, I have tried to impress that on Mr. Bell.

“The Witness: I am making the out-and-out statement, your Honor, that not one dollar of that money has ever—

(Tr. Page 47)

“The Referee: That is your conclusion.

“The Witness: It is not. I have known the people for years.

“The Referee: When I say ‘the utmost frankness’ I mean that you cannot speak in generalities, you must give us figures, must tell us how much it amounts to, so that you will know the seriousness of the situation.

“The Witness: Would you like to have me bring some of the people here, your Honor?

“The Referee: No, I want you to be frank on the

witness stand and tell us what you know about the situation. Go ahead, Mr. Olney.

“Q. By Mr. Olney: Mr. Bell, will you kindly point out the resolution in the Minute Book to which you referred?

“A. Well, if it is not in the Minute Book, Mr. Olney, I will have to check through Mr. Utley’s office and check up with the secretary of the Corporation to find out why it is not there. I can’t read through the whole Minute Book now. I will check up and give— I will get the information for you and a copy of that meeting.

“Q. Mr. Bell, did you examine the Minute Book there in front of you from August, 1945, to date?
(Tr. Page 48)

“A. It is too much of a task to read through all of it here, Mr. Olney. I will get the information and have it for you tonight if you wish.

“Q. Didn’t you just say now—

“A. I didn’t, no. I glanced at it and didn’t recognize anything that indicated this meeting. I couldn’t go through the entire book.

“Mr. Olney: I would like to show it to the Court, at least for that period from August to date, simply to establish the fact that it is not in there.

“The Referee: Mr. Olney, how long has this book been out of the possession of the officers of this Church?

“Mr. Olney: I do not know, sir.

“The Referee: Do you know, Mr. Martin?

“Mr. Martin: My recollection is at least since January 8th or 9th. Mr. Bell would know.

“The Referee: I just gathered from what Mr. Utley said that this resolution was something that at least had been considered rather recently.

“Mr. Utley: I think—if my memory serves me correctly, it was considered since the book was turned over.

(Tr. Page 49)

“The Referee: Yes, that is what I would think.

“Mr. Utley: In other words, we saw ourselves being confronted with the problem—and, as I say, Mr. Cobb handled it principally—but we were trying to devise ways and means of meeting it. And I know it was discussed at that time.

“The Referee: Well, I want to know, Mr. Martin—will you be good enough to inquire from the Trustees if there are any people being maintained in any institution supported by the Trustees who are working for wages or salary; and if they are, then the Trustees will determine how much those people have to pay for their maintenance and support in this institution—or in the institution in which they are living. And \$7.50 will not be sufficient according to present wages and present costs of living. It is obvious, Mr. Olney, that the resolution is not in here; but I think the explanation is that if it was enacted it was probably after that book was turned over.

“Mr. Martin: May the record show that the last resolution in this book is November 9, after the date of bankruptcy, your Honor?

“The Referee: All right.

(Tr. Page 50)

“The Witness: The matter was discussed in August and September of 1945. I will get a copy of the actual resolution and have it made available.

“The Referee: Mr. Bell, if that resolution was adopted before November 9, 1945—

“The Witness: It should be in the book.

“The Referee: —we want to know, why it is not in the book.

“The Witness: It should be. I am quite sure it was after November 9th. How soon, I don’t know. It must have been after November 9th.

“Q. By Mr. Olney: Mr. Bell, these persons who were formerly members of Christ’s Church of The Golden Rule who are now earning wages on the outside—that you have mentioned—I will ask you if it is not a fact that they are donating fifty per cent of the wages which they earn to you personally.

“A. I can not say that is a fact, Mr. Olney. If they are persons who want to make gifts to me, they may make gifts of everything they have or one per cent of it or any part of it—I don’t know.

“Q. I am talking, Mr. Bell, of what has happened since the 19th of November, 1945 and of members of Christ’s Church of The Golden Rule who are now working for some one else and realizing wages. Are they not sending a portion of the funds which they thus earn as donations to you personally?

(Tr. Page 51)

“A. I can’t tell which ones may have been doing it, Mr. Olney. I will say this: That it was deter-

mined back in August and September of last year that should the attacks which we felt were on the verge of being directed against us—should they interfere with the activities of our Church, that some of our people would move away from the obligations of the Church and provide such funds as I might personally need. When the State Receivership came in and it appeared my hands and the hands of the officers of the Church would be completely tied, we took a step a little further along the trail to determine ways and means. And after the bankruptcy proceedings it was evident that I would have no use of any funds belonging to the Corporation nor would the officers of the Corporation nor any project manager have any right to use any moneys except under the direction of this Court; that if we wished to do anything at all in connection with our activities and our ministry that was dependent upon money, we would either have to go into Court and ask for funds or we would have to arrange for some activity outside our student-

(Tr. Page 52)

ministry training projects on the part of individuals to supply such funds. Rather than build up budgets for specific purposes, it was decided that again there would be no obligations of any kind in connection with those funds; that it would be a gift to me and I could use them as I might see fit. I can make this statement: That I am positive that there has not been a dollar from any project under the direction of the Trustees where any instructions have been given to have such moneys sent through

to me—because specific instructions have been given to account for every dollar to the Bankruptcy Trustees, and I am convinced that that can be done to the dollar. What moneys have gone into my hands from various sources—a number of our people and former associates have known that we were faced with the necessity of having some funds that we didn't have to explain to the Trustees or any one else, something that we wouldn't be holding the Bankruptcy Trustees responsible for our activities. After all, they are not the spiritual heads of our Church, and there are many expenses which they seem to be disinclined to meet. There are many steps which I still think necessary to take for the protection of this Church. I cannot come to this Court and ask for its assistance. It isn't possible. From what Mr. Martin tells me, it is outside the realm of bankruptcy procedure for me—

“Q. Since November 19, 1945, you have been receiving funds which were raised in the manner which you just described?

“A. Some time since that date; I don't know how long since that date.

“Q. And those funds have come from persons who were formerly members of Christ's Church of The Golden Rule?

“A. I don't know. Some funds may have, yes. Some persons from the Church—in fact, there is no question but that some persons from the Church have withdrawn from activity on the projects and have gone their separate ways to make such funds as I have described to you available to me.

“Q. And you have received those funds, have you not?

“A. I have received some funds.

“Q. What did you do with the money?

(Tr. Page 54)

“A. I have used such money in accordance with my own discretion, Mr. Olney.

“Q. What did you do with it?

“The Referee: Well I will settle that, Mr. Olney. All right, Mr. Reporter, take this in the record:

“Mr. Martin prepare a written Order. Mr. Arthur Bell, who is now on the witness stand and who is the president of the Bankrupt Corporation, is directed to file in this Court, within ten days from the date hereof, a verified report of all moneys which he has received from any source whatsoever, in detail, since November 19, 1945—together with a verified report on the manner in which the money so received has been disbursed by him. Please prepare that Order. It is now an Order, made in the presence of Mr. Bell and taken down by the Official Reporter of this Court.”

I might add that the Ninth Circuit set that order aside.

It is difficult to set forth all the matters which the parties I have brought here might testify to, so I will have to be content with the statement of the offer as I have made it.

(Tr. Page 55)

The Court: You may state the ultimate facts. Are there any other facts you propose to prove in support of this motion?

We will take the morning recess at this time. Five minutes.

(Short recess.)

Mr. Crittenden: If your Honor please, on an order of proof it is extremely difficult for me to put in words the witnesses' statements made, that their testimony would show the insinuations of the trustees and their employees that they should leave all these through any religious society and they live apart in their religious work. Now, I make that an offer of proof. I just think—

The Court: Make your offer of proof of facts as you claim them to be.

Mr. Crittenden: One of them will testify that offers of that type were given him if he would leave his religious work.

The Court: Offered by whom?

Mr. Crittenden: One of the trustees. I think it was Mr. Boteler. I would not be sure.

And he could also prove and show that donations, up to September 30, 1946, sent in with letters of transmittal or memorandums, mimeographed sheets showing that they paid it under protest, but since it would be used for religious purposes, they were giving it for the care and support of the people in the seminary. I know that took place both in that Papenhausen and the Brant* matter. And, of course, it would follow as a corollary that money of the Lord's purse which was funds of this estate were being used for carrying on this examination, these religious persecutions, paying for these records which I read.

(Tr. Page 56)

And I think I can further show that donations, not only of money, but also of time, effort and services which were accepted and not paid for at all by the trustees, with the statement that was the only way it could keep the church going.

I think that is about my statement of proof that I could show by these witnesses.

The Court: Do you have any further offer of proof of facts to make in support of these?

Mr. Crittenden: I would have to put Mr. Bell on the stand as to that point of his understanding as of the time of filing the petition, his acts in filing the voluntary petition.

Of course, it goes to the second point, that is the one of jurisdiction, this consent, but his belief was what was stated, what you might classify either under mistake or extensive fraud. I don't know which you would call it. As to when he went into this, in filing the petition in bankruptcy. I have set that forth as one of my grounds of the motion. Of course, that goes to the consent of bringing the corporate entity under the jurisdiction of the court.

(Tr. Page 65)

* * * *

Mr. Crittenden: Call Mr. Bell.

Mr. Hunt: If your Honor please, on behalf of the trustees in bankruptcy, so far as the second ground is concerned we object upon the ground—is the offer over? I can't tell. If it is, I would like to put an objection on the record.

The Court: Yes; there has been a completion of the offer of proof, except as to the testimony Mr. Crittenden proposes to elicit from Mr. Bell, as I

understand it. Is that correct?

Mr. Crittenden: That is right, your Honor.

Mr. Hunt: I do not want to make my objection until the offer of proof is finished. Now is it finished or not?

Mr. Crittenden: Yes, it is finished.

Mr. Hunt: On behalf of the trustees in bankruptcy I object to the offer of proof upon the ground that whatever happened since the bankruptcy, whatever the officers of this court did, trustees, receivers, counsel, or the referee in bankruptcy, is incompetent, irrelevant and immaterial upon the question of the right of this court, whether it had jurisdiction to make this adjudication upon the voluntary application of the bankrupt itself. Also, that whatever happened before bankruptcy outside this court is also incompetent, irrelevant and immaterial upon the jurisdiction of this court to pass upon a voluntary petition in bankruptcy which is correct on its face, and make or not make the adjudication.

(Tr. Page 66)

The Court: I will reserve ruling on that objection.

Mr. Clerk, will you swear Mr. Bell?

The Witness: I wish to affirm, please.

ARTHUR L. BELL,

called as a witness by Petitioners, being first affirmed, was examined and testified as follows:

The Clerk: Please state your name for the record.

The Witness: Arthur L. Bell.

Direct Examination

By Mr. Crittenden:

Q. And your residence, Mr. Bell?

(Testimony of Arthur L. Bell.)

A. 1201 California Street, San Francisco.

Q. Referring to this church, Christ's Church of the Golden Rule, what position or relationship have you held and do you now hold in that group?

A. Church trustee and ecclesiastical head of the affiliated Christ's Church of the Golden Rule.

* * * *

Q. Mr. Bell, in that corporation, its temporal agency of the Christ's Church of the Golden Rule, a California corporation, do you hold any position in that?

A. As president and director, also as church trustee.

Q. Referring to the fall of 1945 were there proceedings commenced in the State court?

A. There was.

Q. What was it?

A. A receiver was appointed to take over the church and its properties.

Q. Do you remember the approximate date there?

A. I believe it was October 10th, 1945.

Q. When was bankruptcy first mentioned or discussed by you with anyone?

A. The latter part of October.

Q. Who with?

A. With Mr. Parsons over the telephone. He was in Oregon at the time. With Mr. Wirin in person, and with Mr. Utley in Mr. Utley's office, Ernest Utley of Los Angeles.

(Testimony of Arthur L. Bell.)

(Tr. Page 68)

Q. Did you say anything before the discussion to Mr. Utley? A. What was that, sir?

Q. Before you went over to Mr. Utley was anything mentioned? How did you happen to go to Mr. Utley's office?

A. Mr. Parsons told me that he had some extended discussions with Mr. Utley about our problem and the State receivership; that Mr. Utley was familiar with the nature of that problem and would be able to advise me relative to matters of bankruptcy.

Q. Did he state anything to you about what the bankruptcy proceedings were, Mr. Parsons or Mr. Wirin?

A. Not other than the fact that certain assets would have to be put in the care of the court to guarantee our listed creditors and to make sure that such creditors were paid as we might list as creditors.

Q. Then you went to Mr. Utley's office. How long was that before the petition was filed?

A. I think it was only a day or two.

Q. And that is when you filed the Chapter XI proceedings? A. That is correct.

(Testimony of Arthur L. Bell.)

(Tr. Page 69.)

Q. You did discuss this with the board of directors at a meeting on November 1st?

A. Yes.

Q. What was the discussion?

Mr. Hunt: If the court please, I object to any further questions along this line upon the ground it is incompetent, irrelevant and immaterial what discussions they may have had among themselves in the face of the fact that the records of this court show that they not only filed this Chapter XI proceeding, the bankrupt did, but, pursuant to resolution duly adopted by the church corporation, and later on, filed the voluntary petition in bankruptcy in the same case upon a resolution of the same board of directors duly adopted, and upon the basis of that petition this court made the order of adjudication which is here attacked.

The Court: Do you propose to impeach the resolution attached to the petition?

Mr. Crittenden: I want to show what was the manifestation, as your Honor said, of the outward signs of the parties' minds, to show the reality of consent. If you want me to ask the man what he believed at that time, I will do that; but I thought it would be better to take it up as to the manifestations.

The Court: Do you think it would be competent?

Mr. Crittenden: State of mind, yes, a state of facts.

(Testimony of Arthur L. Bell.)

(Tr. Page 70.)

The Court: Suppose the bankrupt came in here and said, "At the time I signed that petition, I did not know I was getting into this," would that be a ground for setting it aside?

Mr. Crittenden: If he did not know what it was. That is what we set aside these property settlement contracts and promissory notes and other business deals on—on that very basis that they did not understand what they were doing. They may well have thought there was a contract at the time, but they did not realize its premises when they are alleging sometimes—sometimes we call it "fraud" and sometimes we call it "mistake".

The Court: Who is alleged to have caused the mistake?

Mr. Crittenden: That is a question.

The Court: Between whom is the issue?

Mr. Crittenden: The question is as to the reality of the consent in bringing the corporation before this court.

The Court: I will hear it. Objection overruled.

Mr. Hunt: If your Honor please, I would like to have the record show that these resolutions I spoke of, a certified copy of those resolutions are of record here in connection with the two petitions, the petition filed on the Chapter XI and the petition in bankruptcy. They are in the record here as exhibits attached to the two petitions for that relief.

(Testimony of Arthur L. Bell.)

(Tr. Page 71.)

Mr. Crittenden: I believe there is only one and that is of November 1st, Mr. Hunt. Am I wrong?

Mr. Hunt: Both those. There were resolutions both for the November 1st petition and the resolution for the bankruptcy petition. I have here the minute book if you wish to examine it.

The Court: Do you have a record of the hearings that were had prior to adjudication? Were those transcribed?

Mr. Crittenden: Yes; they were, your Honor.

The Court: Do you have a record of them?

Mr. Crittenden: I have mimeograph copies of them.

Mr. Hunt: I haven't them, your Honor.

Mr. Crittenden: I brought them down, reading them on the train last night. It was done very hastily. There was a transcript of November 6th.

The Court: That was the first hearing.

Mr. Crittenden: November 13.

The Court: Were those the only two days?

Mr. Crittenden: No; there is another one. And then there was one of November 15th and November 16th. If it was just, your Honor, a question of refreshing your recollection, I could loan you those copies.

The Court: I just supposed that there was a record made and they would probably be offered in connection with this motion.

(Testimony of Arthur L. Bell.)

(Tr. Page 72.)

Mr. Crittenden: There is nothing in the record tending to show a statement of intention that they would file it that afternoon.

The Court: Wasn't there some discussion about the filing and weren't there some formalities that took place here in the court room, such as other parties who had not theretofore signed signing?

Mr. Crittenden: I remember, your Honor, a statement—this is roughly by skimming—your Honor said something about a voluntary petition would be entertained but an involuntary could not be, barely that point of jurisdiction to file a petition; and also that the misuse of the temple of the court to avoid a State decree of dissolution. And I think your Honor on another hearing said that the question of dissolution would be entirely collateral to any bankruptcy proceedings.

The Court: Of course, there could not have been an involuntary adjudication against a religious institution, so it had to be voluntary if there was an adjudication at all. That was the assumption, at least, as I recall the discussion; and, as I recall, also, the petition was brought here, was signed by the secretary, I believe, of the corporation.

Mr. Crittenden: That is right.

The Court: I declined to entertain it until it had been signed by Mr. Bell.

(Tr. Page 73.)

Mr. Crittenden: That is right.

(Testimony of Arthur L. Bell.)

The Court: And someone else, I believe; and, as I recall, that was done here in open court.

Mr. Crittenden And the petition was signed—signed by the two, Mr. Bell and Miss Knapp as secretary-treasurer, although there was a considerable point raised, probably with considerable merit, that the by-laws or the articles of incorporation did not give the secretary-treasurer power to exercise that duty. It was gone into rather thoroughly at the time. I think your Honor was inclined to that view on the original Chapter XI proceedings, which was something I read last night in a hurry on the train.

The Court: You may proceed with your direct examination.

Q. By Mr. Crittenden: Mr. Bell, what was that discussion at that first meeting of the board of directors on November 1, 1945?

Mr. Hunt: If your Honor please, may it be understood that my objection is made to all these questions on the same grounds as previously made, and the court is reserving its rulings?

The Court: As to any discussion had leading up to the resolution of the board of directors.

Mr. Hunt: Or leading up to the adjudication, your Honor.

(Tr. Page 74.)

The Court: Is that stipulated?

Mr. Crittenden: It is; yes.

The Court: Very well.

(Testimony of Arthur L. Bell.)

A. A general discussion was had pertaining to the effect of the state receivership and the attempt to ransack the various seminaries and church properties, personal belongings of our affiliates, and drive our people into the streets, take them out of their homes and seminaries, and the necessity for some action which would place us under the protection of the federal courts in their duty to enforce the Constitution and Bill of Rights, to make sure that our rights of religious freedom might be preserved and safeguarded, to seek that protection and to have the properties removed from the hands of those who were ransacking and destroying them as rapidly as we could; that we would have to show our good faith and willingness to cooperate in the paying of any of the listed creditors that we had on our records at that time; that we could not just put up enough property to pay the \$111,000, but that we would have to place all of our property in the care of the court until that \$111,000 was paid.

That we would carry on our church activities as formerly, but we would not be able to sell any properties without the consent of the court, not be able to pay out any monies without the court's auditor's consent; that otherwise we would go on as before, having the protection of the federal courts in shielding our rights of religious worship and in carrying out our charter and the by-laws of our church, and making sure that no attack was made upon our rights of religious freedom; and

(Testimony of Arthur L. Bell.)

that the estate was safeguarded against dissipation or destruction; that the purposes of our charter and by-laws might be carried out, and that every effort might be made to make sure that those purposes were carried out.

That the court's responsibility would be to understand the nature of that charter and by-laws, the nature of our church activities, and to be sure that every dollar spent would be spent to carry out those purposes.

We felt that the federal courts having the responsibility of shielding the rights of all American citizens would be impartial; that they would not be prejudiced because we were an unpopular religious minority, but would be primarily concerned in making sure that all of our rights were safeguarded and that we had the right to worship God as we saw fit, and to illustrate our religion as we might see fit; and that the assets of the church would be audited to make clear that all of those assets had been used in that way and had not been misused, which we were quite willing to have made. In fact, we have spent a great many thousands of dollars in preparation of such audit ourselves.

(Tr. Page 76.)

The Court: You were questioned as to what took place at this directors' meeting.

The Witness: I am telling you what took place, your Honor, in considerable detail. This was all discussed at that meeting. The other two directors

(Testimony of Arthur L. Bell.)

and myself, in Mr. Utley's office, discussed the matter with Mr. Utley.

The Court: Is this the same directors' meeting?

The Witness: The same directors' meeting.

The Court: Was it held in Mr. Utley's office?

The Witness: In Mr. Utley's office. The Section XI proceedings were described as a proceedings that would enable us to carry on our activities under the direction of the court and with court auditors verifying our proper use of funds and the issuance of such funds to carry out the purposes of our charter and by-laws. In other words, there would be no misuse of funds or had been no misuse of funds.

We were quite willing to come under the complete control of the federal courts in the preservation of the society and the rights of our people to worship God as they saw fit. We felt we needed this protection when Robert Kenny and certain union communists were trying to take away our church and—

The Court: Was this discussed at that meeting?

The Witness: This was all discussed in detail.

The Court: Was Mr. Utley present?

(Tr. Page 77.)

The Witness: He was present at part of this discussion. We felt that certain union communists in the state had been able to use Robert Kenny as the spearhead—

The Court: Not what you felt. I want you to

(Testimony of Arthur L. Bell.)

tell me when Mr. Utley was present and when he was not present.

The Witness: He was present at the time we discussed the effect of the Chapter XI proceedings, that we would carry on our work and under the jurisdiction of the court that we would have a right to carry on our activities as before, but under the close scrutiny of the court, which we were quite willing to have.

The Court: Was anyone else present besides the directors and Mr. Utley?

The Witness: I believe not.

The Court: Was Mr. Parsons present?

The Witness: No, I think he was in Oregon at the time. I believe Mr. Wirin was occupied with other engagements and was not able to be present.

Q. By Mr. Crittenden: That was when the resolution was passed and when the petition was signed, was it?

A. Yes; about that time.

Q. When was the first mention of a voluntary petition in bankruptcy made in your presence and hearing?

(Tr. Page 78.)

A. After November 1st certain State agencies, Mr. Manaugh and his agents continued to ransack our properties and to try to remove our people. And when we found that this court would not entertain the Chapter XI proceedings, our people were going through so much harassing at the time,

(Testimony of Arthur L. Bell.)

we had to move into some other type of proceeding that would give them protection; and it was then suggested that the voluntary proceeding be filed.

Q. Who was the first one that said it, and where were the parties and who was present?

A. Well, I believe, in this court, that the matter was presented, that the only type of proceeding the court would accept or recognize would be a voluntary proceeding; that it could not recognize a Chapter XI. I think that was the first time that the thought was presented to us.

Q. When was the next time it was mentioned, and who was present and what was said?

A. Well, after some days of discussing the Chapter XI proceeding in this court, we reached an impasse. Mr. Manaugh and his state men were still ransacking our properties. Something had to be done very quickly and the voluntary proceeding was then mentioned by Mr. Utley, and our directors were called in his office and at that time it was then discussed.

Q. What was said and who said it? Give us close to the exact words as you remember them. Was Mrs. Knapp present?

A. Yes; Mrs. Knapp and Miss Nordskott were present.

Q. Who else?

A. Miss Nordskott and myself. There was not a great deal of discussion about it, Mr. Crittenden, it was done so rapidly. We had been going day and

(Testimony of Arthur L. Bell.)

night and about 20 hours a day, all three of us, and the papers were drawn in Mr. Utley's office that would cover the proceeding, and it was stated at our meeting—

Q. Who said it?

A. Mr. Utley. —that our assets in toto would have to be turned over to the court to secure the creditors who were listed in our schedules and to assure the payment of such debts as were listed on those schedules; that the purpose of the court in preserving our rights of religious worship and carrying on the activities of the church under its charter and by-laws would be the same; that the trustees would take over my responsibilities and would take over the handling of the church affairs in the same way that it had been my obligation to handle them, only to make sure that the monies were used to carry out the charter and the by-laws and that no money was misused and that no attack was made upon the church which might jeopardize the rights or interests of those \$111,000 creditors; that we would have to consent to the sale of sufficient properties to pay the \$111,000 of creditors. And being anxious to complete the matter as quickly as possible, we consented to the sale of our choicest property, the Continental Building.

Q. Was that discussed at the time?

A. Among our directors. I do not recall whether Mr. Parsons or Mr. Utley was there at the moment.

(Testimony of Arthur L. Bell.)

Q. I am referring to this second meeting. What was discussed and what was said?

A. Well, that was the general substance of it, Mr. Crittenden, that we would have to consent to the immediate sale of some property to clear this \$111,000 in creditors, or whatever our schedule of creditors might be that we would add to the list.

Q. And what would happen then?

A. Then that we would be relieved, the court would release us, and we would carry on our business ourselves, inside of and under the close scrutiny of the court.

The Court: Is that about all that Mr. Utley said?

The Witness: That is about all Mr. Utley said.

The Court: What you have recited here in the last two answers is what Mr. Utley told you?

The Witness: That is right. I had no understanding of the matter other than the court would preserve the estate and preserve our rights to function as our church, as we formerly had, but under the close scrutiny of the jurisdiction of the court.

(Tr. page 81.)

The Court: That is what Mr. Utley told you?

The Witness: That is right.

Q. By Mr. Crittenden: Did anybody say anything to you that the trustees would run or hold the property free and clear of its religious uses?

A. At no time; at no time. We thought that they would take what we had and that was an ob-

ligation to carry out the charter and by-laws of our church with such assets as the church might possess; they would have no different rights than we had, no greater ownership than we had; they would merely have whatever trust responsibilities we possessed and would be obliged to carry out this trust responsibility as under the jurisdiction of the court.

Q. Was that the time the petition was filed and signed, in relation to that time was it that afternoon or the next morning?

A. I don't recall whether it was afternoon or in the evening. We went through the evening and most of the night. I think we worked three or four nights until daylight. I think we worked in Mr. Utley's office. I think our people—

Q. Or was that preparing schedules?

A. Yes; preparing schedules.

Q. Following that did you discuss the nature of the adjudication at that time?

(Tr. page 82.)

A. Not other than I stated to you. We thought we were handing my mantle over to court officers to carry out the purposes of the charter and by-laws.

Q. Was this ever submitted to any members of the membership or the group to vote or consent?

A. It was not done, Mr. Crittenden, because we felt the charter and by-laws were very clear and the court would be obliged to carry out the purposes of the charter and by-laws. The members had al-

(Testimony of Arthur L. Bell.)

ready consented to them and signed them. We saw no reason to take the matter up with them.

Mr. Crittenden: That is our proof.

Mr. Hunt: If your Honor please, I have no cross examination, but I would ask leave to put on testimony of Mr. Utley, without withdrawing or waiving the objection previously made, in view of the fact that your Honor is reserving ruling on my objections and permitting this testimony to be taken.

The Court: Does anyone have any questions from Mr. Bell?

Mr. Hunt: No.

The Court: You may step down, Mr. Bell.

Have you any other witnesses, Mr. Crittenden?

Mr. Crittenden: Yes, your Honor.

The Court: Does that complete your offer of proof and the testimony in support of the motion?

(Tr. Page 83)

Mr. Crittenden: That is right, your Honor, but, of course, the motion is made on the records before your Honor, of which your Honor takes judicial notice. I don't want to put those on the record.

The Court: I will take judicial notice of all that has gone before that is a matter of record in the proceedings.

Mr. Crittenden: That is right.

The Court: If you so desire.

Mr. Crittenden: Yes. Your Honor has to take judicial notice of the records—excuse me—the court

has to take judicial notice of its records and proceedings in the case, and I did not think it was necessary to do more than point it out in my brief.

The Court: It is only necessary to call it to the court's attention.

Mr. Crittenden: Yes, sir.

The Court: So the court can have judicial knowledge, in order to take judicial notice. That is right.

You say you desire to take some testimony?

Mr. Hunt: Yes, if your Honor please. Judge Utley.

ERNEST R. UTLEY,

called as a witness by Trustees, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

(Tr. Page 84)

The Witness: Ernest R. Utley. Your Honor, the fact that Mr. Martin and I are both here cripples is no sign that we have been in a fight.

The Court: Both of you just disabled?

The Witness: Both of us disabled.

The Court: You are appearing here as attorney for the bankrupt?

The Witness: I am attorney for the bankrupt; yes.

The Court: I did not know whether the record showed that at this time or not.

(Testimony of Ernest R. Utley.)

Direct Examination

By Mr. Hunt:

Q. Mr. Utley, you are an attorney of this court, duly admitted to practice for how many years?

A. Oh, I think I was first admitted to practice in Oklahoma in 1917, and first, in California, in 1919; and I was first admitted to the Federal Court, I believe, in 1920.

Q. And you have been actually engaged in matters in this court and the State courts of California since that time? A. I have.

Q. Were you ever a referee in bankruptcy of this court?

(Tr. Page 85.)

A. From 1936 until March of 1945.

Q. Then what happened?

A. Well, I resigned and engaged in the practice of law here in Los Angeles.

Q. When were you first approached by Mr. Bell or Mr. Parsons or any of their associates with respect to this particular case?

A. Well, I was first approached by Mr. Parsons, I think it was a Saturday, about a week—it was on a Saturday, but it was about a week or maybe a few days over a week before the proceeding was actually filed.

Q. And what discussion did you have with him at that time?

A. Well, the discussion was not extensive be-

(Testimony of Ernest R. Utley.)

tween Mr. Parsons and I at the time. He merely stated, made some mention of the State court receivership and briefly discussed the case, and asked me what I thought of the advisability of proceeding in bankruptcy. And I told him I thought, on the brief information that he had given me, that rather than straight bankruptcy it might be more feasible under Chapter XI of the Bankruptcy Act. And he said that he thought he would send Mr. Bell down to talk to me; that he was leaving town and Mr. Bell might be in to see me. Our discussion was quite brief at the time.

Q. Any further discussion with Mr. Parsons at that time? A. I don't believe so.

(Tr. Page 86.)

Q. When was the next discussion you had with Mr. Parsons or Mr. Bell or Miss Nordskott or Mrs. Knapp, or all or any of them?

A. Well, Mr. Wirin called and made an appointment for he and Mr. Bell to see me—oh, a few days—I wouldn't say just how many—before the petition was filed. It was late in October.

Q. Just a moment. Mr. Parsons and Mr. Wirin, were they representing these parties at the time these events occurred?

A. They were, yes; that is right.

Q. Please go ahead.

A. And in the afternoon, Mr. Wirin and Mr. Bell came in to see me. As I recall, Mr. Wirin did not stay very long at the time.

(Testimony of Ernest R. Utley.)

Before I relate all that was said, I am wondering about the confidential relationship between attorney and client. I am quite willing to talk, but I do not want to violate—Mr. Bell has testified. If Mr. Bell will relieve me of the confidential relationship, I will be glad to go ahead.

Mr. Arthur L. Bell: I shall be very happy to relieve Mr. Utley of any responsibility.

The Witness: Very well.

(Tr. Page 87.)

And Mr. Bell asked me numerous questions concerning bankruptcy and concerning Chapter XI.

Now, whether this discussion all took place at that time—there was a discussion at that time, and at the end of it Mr. Bell told me to go ahead, but he came back later and I discussed at length with him various provisions of the Bankruptcy Act and Chapter XI.

I told him that under Chapter XI, under Section 322 they could file a petition for a plan of arrangement. I explained what a plan of arrangement was—a plan to pay creditors; that the Act provided, that Section 342, I believe it is, provided that where no order was made with respect to a receiver, the debtor automatically remained in possession; that in his case, in the light of the State Court receivership I thought in all probability if a Chapter was filed, a receiver would be appointed whether we asked for it or not. He thought it was advisable to have a receiver.

I told him that the court, if we asked or if the

(Testimony of Ernest R. Utley.)

creditors asked, would probably appoint a receiver. I told him the provision. I read to him that provision for the appointment of a receiver. I think it is 333 or right in there somewhere. We discussed the question of the claims.

He said that he owed general unsecured creditors approximately \$111,000. He told me something of his secured obligations. I told him that the secured obligations would not be affected by a plan of arrangement unless the secured creditors consented to it; that those contracts would have to be carried out as contemplated in the contracts; that in order to secure a plan of arrangement he must have the consent of a majority in number and amount of unsecured creditors before the court would have jurisdiction to approve a plan of arrangement, but the court also must find that the plan was feasible and equitable and for the best interests of all parties concerned.

I told him that if the plan of arrangement was not approved under a Chapter XI proceeding there could be an adjudication. I discussed then what would follow in the event of an adjudication, that is, a liquidation of the estate or so much of it as necessary to pay off obligations, including administration expenses.

We discussed what the cost of the receivership would be. I read to him a portion of Section 48, I believe, of the Act—the section, anyway, that deals with receivers' fees. I told him the receivers would

(Testimony of Ernest R. Utley.)

probably have their own counsel and I told him—we discussed the question of claims, and I asked him if there were any taxes owing. He said there were not. I told him that we could anticipate tax claims being filed and, if they were filed, we would have an opportunity to appear and object to them and have a hearing on it; or, if any claims were filed that would not be properly allowable, the bankrupt or any interested party would have a right to appear and object to the claims.

All those matters—he wanted to know how long it would take. I told him that if it was a simple case where he had some \$3,500,000 in property, the selling of enough property to pay off \$111,000 in claims, and there were no other intervening legal problems, that should not take long.

He pressed me for a number of months and I said, “Well, I have been a referee in bankruptcy. I have closed some of those cases very hurriedly, where there were no complicated matters of litigation; other cases have dragged along for years, where there was a considerable litigation, and there is no definite way of determining that question. But we would endeavor to dispose of it as promptly as we could.”

The Court: I think I had better interrupt Mr. Utley for the noon recess.

Mr. Utley: I could finish in just a minute, I think, and I would like to, if I could.

The Court: Very well.

(Testimony of Ernest R. Utley.)

The Witness: I also told Mr. Bell that under Section 21A of the Bankruptcy Act they could put any person on the stand and examine them concerning the acts, conduct or property of the bankrupt. And I used the expression, I said, "We have often said that under that Section you can turn a person wrong side out and shake them." And I said, "You are not limited to the rules of evidence under 21A examination because the court is not determining any issue under those examinations."

(Tr. Page 90.)

I read numerous sections of the Act and of Chapter XI to Mr. Bell at the time. And he was quite anxious to know the religious views of the various courts and the religious views of the various referees and the religious views of the various prospective receivers. I told him what I knew of that.

He was very anxious to know that he would not be what he termed "persecuted". I told him that I thought he would receive fair and just treatment at the hands of the Federal Court anywhere he came in. I told him I thought, I believed then, and I still believe, that he would be better off under the jurisdiction of the Bankruptcy Court; he would have greater protection than he would under a State court receivership; and that I felt under the jurisdiction of the Bankruptcy Court, and I still believe, that the bankrupt would have a great deal more to say as to how the property was operated

(Testimony of Ernest R. Utley.)

and conducted, under the supervision of the Bankruptcy Court than he would under State court receivership.

I told him I thought that the bankruptcy proceeding would be less expensive than a State court receivership; that there would not be as great a liability or probability of a dissipation of the assets; that the bankruptcy court guarded the matter to a greater extent than did State court receiverships; that the trustee, or where there was a receiver, countersigned all checks and that they were careful to see that the money was legally expended.

There was quite a length conversation, our conversations leading up to the filing of the case, and there was a great deal said. That covers it briefly.

Mr. Hunt: Just one question, Judge. And then I will quit, your Honor.

Q. Did you discuss 21J with him relating to the calling of the party as an adverse witness as if upon cross examination?

A. I never mentioned, I don't believe, 21J, but I mentioned 21A extensively. I also discussed with him that provision of the various grounds upon which a discharge in bankruptcy could be denied, discussed with him the various problems that would confront us in getting a plan of arrangement approved, and the general operation of Chapter XI. I read many of the sections to him.

Mr. Hunt: Does your Honor want to adjourn now?

The Court: Yes. We will take the noon recess at this time until 2:00 o'clock. I will adjourn this hearing until 2:00 o'clock this afternoon. Court will be in recess until 1:30.

(Whereupon, an adjournment was taken until 2:00 o'clock p.m. of the same day, Friday, November 14, 1947.)

(Tr. Page 93)

Los Angeles, California, Friday, November 14,
1947. 2:00 P.M.

Afternoon Session

ERNEST R. UTLEY—(Recalled)

The Court: You may proceed, Mr. Hunt.

Mr. Hunt: If your Honor please, I have completed my direct examination.

The Witness: There were one or two matters, may it please the court, in answer to Mr. Hunt's question that I overlooked this morning in my hurry to get through for the noon hour.

The Court: Would you like to amplify your answer?

The Witness: Yes. The question arose as to advice on adjudication and straight bankruptcy. The question arose as to adjudication when the discussion was had with respect to a Chapter proceeding, when I told Mr. Bell that an adjudication could be had in a Chapter case and discussed with him then, generally, what would happen in

(Testimony of Ernest R. Utley.)

the case of an adjudication, such as liquidation of assets or so much thereof as would be necessary to pay the obligations.

Then when the question arose later about filing a straight bankruptcy, about the only thing that was said then with reference to it was the fact that, even though there was an adjudication under Section 321 of the Act, a Chapter proceeding could subsequently be filed in a case where there had been an adjudication. And at that time there was not any further extensive discussion of what would happen in the event of an adjudication, inasmuch as it had been previously discussed.

(Tr. Page 94)

I also told Mr. Bell that the line of demarcation as to what belonged to the bankrupt estate was the date of the filing of the petition, and that all property owned by the corporation as of the date of the filing of the petition would be assets belonging to the bankrupt estate and would have to be turned over to the receiver or whoever was in charge of the bankruptcy estate; and that all property and records pertaining to property should be turned over to the bankruptcy receiver or receivers under Chapter proceedings.

Mr. Bell discussed with me with respect to the religious angle of the corporation, and I told him that the bankruptcy court was principally concerned with collecting the assets and paying the debts; and that I did not feel that the bankruptcy

(Testimony of Ernest R. Utley.)

court would be interested in affecting the rights of the members of the church or that they would try to affect their rights insofar as their religious worship was concerned; that the purpose of the bankruptcy court was to collect assets and pay debts, and that I did not feel that the members would be bothered in that respect.

The question arose as to whether or not they would be permitted to remain upon the property, and there was a lengthy discussion of that. And some of these members were running laundries, others were running hotels, and so forth; and I told him that quite frequently, if a case remained in Chapter proceedings, why, there was nothing that I could see that would prevent the operation of those properties by the members of the church; or, if the property was operated even after adjudication, I did not see anything that would change that rule, provided a receiver or trustee or the bankruptcy court would expect whoever worked upon those projects, whether it be a laundry or hotel, would have to do their work and do it as directed by the receiver and the bankruptcy court and would have to cooperate with the receiver and bankruptcy court.

(Tr. Page 95)

And there was a great deal more discussion. Mr. Bell asked many questions and they were answered. I don't know as I can remember all of

(Testimony of Ernest R. Utley.)

them, but generally that was the nature of the discussion with Mr. Bell and, to a lesser extent, these matters were briefly discussed with the other two members of the board of directors before the resolutions were passed, but very briefly. What extent Mr. Bell may have discussed it with them I do not know, but I mean in my presence.

It was discussed probably more with Mrs. Knapp than with Mrs. Nordskott, due to the fact that Mrs. Knapp was here and Mrs. Nordskott, a part of the time, was in San Francisco; but the major part of my discussion was with Mr. Bell.

(Tr. Page 96)

The Court: Any questions, Mr. Crittenden?

Mr. Crittenden: No questions, your Honor.

The Court: Any further testimony?

Mr. Hunt: If your Honor please, in the Petersen matter that was on the calendar for today Attorney Martin, who formerly represented the trustees, conducted the trial of that case before the Referee, and there is one short matter that should be created of record. I would like to take his testimony so that he can get away and attend to other business, if that is in order. He has been here all morning.

The Court: On the Petersen petition for review?

Mr. Hunt: Yes, your Honor.

(Proceedings on the Petersen petition for review omitted from this transcript.)

Mr. Crittenden: Your Honor, during the lunch hour there occurred to me there was one matter going to the question of discretion on that motion to set aside the adjudication on the grounds of religious persecution; there is very little prospect of the trustees paying any dividends, in view of the statement Mr. Hunt made to me several weeks ago that Governor Warren had written a letter to the Attorney General's office protesting any settlement on that tax matter, and now they were having difficulty even talking to any of the officials of the State in the tax matter; consequently the prospects of an early settlement in the tax matter or dividends was in the far and distant future.

The Court: All that adds up to—

Mr. Crittenden: It just adds to the discretion.

The Court: —that one of the creditors of the estate won't settle; isn't that the fact?

Mr. Crittenden: Well, I want to show the reason why, if that were necessary. A continued administration, therefore, would be in the discretion of the court to consider as to whether the administration should be terminated forthwith, and the rules I have cited in the memorandum of points and authorities, or whether it shall be permitted to run its course.

As to the points of law on this motion, I have covered it rather thoroughly in the memorandum. I could go over it again in oral argument if your Honor wishes. I do not think that would add anything to it.

The Court: I have no desire to hear a repetition of what is in the memorandum. I have read the memorandum.

I would like to hear you on these reviews if you have finished with the motion to vacate the adjudication.

Mr. Utley: May it please the court, if you are through with the motion, may I be excused?

(Tr. Page 98)

The Court: Yes, you may as far as the court is concerned. Is there any occasion to require Mr. Utley's further attendance?

Mr. Crittenden: No occasion.

The Court: And the bankrupt is not interested, I take it?

Mr. Utley: In the review the bankrupt is not a party.

The Court: The motion to vacate the order of adjudication is denied. Counsel for the trustees will prepare a formal order embodying this ruling under Local Rule 7.

Mr. Hunt: I do not believe the court has ruled on the offer of proof. Of course, I presume that is absorbed in the other.

The Court: I received all the evidence, everything that was offered. My ruling is based upon the assumption that the facts would be proved as offered, and upon the assumption they are true.

Mr. Hunt: Yes. Well, I presume that means that the offer of proof is denied.

Mr. Crittenden: I would duly note an exception.

The Court: No. I have accepted his offer of proof.

Mr. Hunt: Oh, I see.

The Court: I am assuming that the facts are true,

Mr. Hunt: Oh. I see.

(Tr. Page 99)

The Court: That the facts are true.

Mr. Hunt: I see.

The Court: For the purpose of this ruling.

Mr. Hunt: Yes.

The Court: And even so assuming, the motion would have to be denied.

Mr. Crittenden: I just asked your Honor to note an exception on that.

The Court: Yes; an exception will be noted to that ruling. But I want the record to be clear—I am glad you brought it up—that my ruling is predicated upon the assumption that all the facts stated in your offer of proof are true; and so

assuming, I would still be required and do deny the motion.

Mr. Crittenden: That is on the two grounds—one as to the discretionary power and the other as to the jurisdiction?

The Court: And the other as to the jurisdiction.

Mr. Crittenden: Including the question of stockholders' consent?

The Court: Yes, sir.

Mr. Crittenden: Or the members' consent?

The Court: Yes, sir. You will prepare a formal order within five days.

Mr. Hunt: I will, your Honor. I will follow the Rule, your Honor.

(Tr. Page 100)

Los Angeles, California, Friday, November 14,
1947. 2:00 P.M.

Afternoon Session

Excerpt

The Court: Do you have anything, Mr. Hunt, that is not covered by your 29 page memorandum?

Mr. Hunt: Oh, I am not going to re-hash anything that I have got in my memorandum, but I want to cover some matters of fact which I think have been clearly mistaken by counsel.

The Court: I expect to read the record.

Mr. Hunt: Yes, I know. Well, just to clear this

up, your Honor, the plumbing supplies were sent to the Hanley Ranch in Jackson County, Oregon, remained there ever since, I think, September, 1945. The Hanley Ranch was an asset of this estate and came into the possession of this court on November 1, 1945 and has been in the possession of this court and its officers ever since; and the plumbing supplies remained there in possession of the bankruptcy receivers and trustees until sold sometime in September.

The Court: That covers the summary jurisdiction.

Mr. Hunt: Yes; that meets the question of summary jurisdiction.

The Court: But what do you say to the proposition that the dealings between the church and its members were presumptively fraudulent, the same as dealings between the trustee and the beneficiaries of the trust?

(Tr. Page 3a)

Mr. Hunt: Yes. If your Honor please, what they tried to do—I want to state right here and now that it is absolutely false that Referee Brink ever refused to receive any evidence that he considered relevant, competent and material. These parties have attempted, without doing it, to indirectly charge the church and Bell with fraud. They never came out and directly charged either one with fraud. There is nothing in the record to show that Patrick ever repudiated any of these

religious beliefs. The answers do not show that he completely severed himself from the church or he expects to do so in the future.

The Court: Does the answer charge fraud on the part of Bell?

Mr. Hunt: No, sir.

Mr. Crittenden: Well, now, let us read it.

Mr. Hunt: Just let me finish, please.

Here is what he has tried to do: Here he comes in here, trying to charge people with fraud, and yet in another proceeding that is going to come before your Honor in review, he represents Mr. Bell.

The Court: Who does?

Mr. Hunt: Mr. Crittenden. He has done that in San Francisco. He has gone in, representing Bell, and then the next day he comes in as a matter of practice or something like that and charges Bell with fraud.

(Tr. Page 4a)

Mr. Crittenden: Your Honor, I have a consent on that which I wish to file with the court, dated in November of '46, before I would take any of these matters either for him or others, he is subordinating his position to the position of the others. His primary concern was that of his religious freedom. I want to point here the last paragraph.

The Court: Do you have an extra copy of it?

Mr. Crittenden: Yes; I have, your Honor.

The Court: The clerk will mark this—

Mr. Crittenden: What is shown in the last paragraph—

The Court: Just a moment. Let us get our record straight. It will be marked as Petitioner Petersen's Exhibit 1 upon this review.

Mr. Hunt: Shall I proceed, your Honor?

Mr. Crittenden: I want to answer these charges against me as a lawyer.

The Court: Well, you say this document answers it.

Mr. Crittenden: I will read a paragraph in here and show you just what it says.

Mr. Hunt: May I proceed?

The Court: What else do you have, Mr. Hunt?

(Tr. Page 5-a)

Mr. Hunt: Now, then, on this fourth question, the record plainly shows that Mr. Patrick, after he turned these goods over to the church and they were in the church's possession, went to work on church projects, was active in the church.

The Court: That is all covered.

Mr. Hunt: That is all covered in the transcript. And remained on these projects, as far as I know, up to now, as far as the record shows, up to now. And I just call your attention briefly to this part of the record. On July 10, 1946, Patrick testified:

“Q. Now, after you had closed your business did you go on some project of the church?”

“A. I did.

“Q. Where did you go?”

“A. I want to the Palomarin Ranch.”

That is in this San Francisco area.

The Court: That is admitted. Mr. Crittenden said he went on the project.

Mr. Hunt: That is in the transcript, your Honor.

The Court: What do you say to the point that these transactions between the church and its members are presumptively fraudulent; that the burden is on the church to show good faith dealing with the members?

Mr. Hunt: If your Honor please, it is not alleged anywhere that the church was the basis. The allegation in the answer is that Mr. Bell was the basis. There is no charge that there is any fiduciary relationship between the church and Patrick, only between Bell and Patrick.

(Tr. Page 6-a)

The Court: What is the difference between Bell and the church?

Mr. Hunt: There may be none.

The Court: Isn't one the alter ego of the other?

Mr. Hunt: Well, I would not say that. The way it is conducted and operated, I would not say so;

but legally, I do not know. Mr. Bell is the dominant figure, of course.

The Court: I would not think there was much difference.

Mr. Hunt: Well, there may be none.

The Court: The fraud by Bell was the fraud of the church. The church operated through Bell. He was the sole trustee with the right of succession. If he appointed his successor in the presence of four or five notary publics, according to the by-laws, he was entitled to appoint his successor indefinitely.

Mr. Hunt: Well, maybe I can answer it this way, whether or not any fraud was committed by the church: There is no charge here, at least never answered, and the record does not show any, of fraudulent conduct on the part of the church. The whole thing is based upon the White decision and upon things that came out of this Mankind United movement.

(Tr. Page 7-a)

The Court: Would you contend that representations by Bell were not representations of the church?

Mr. Hunt: Oh, no, no.

The Court: If there was fraud on the part of Bell, there was fraud on the part of the church, wasn't there?

Mr. Hunt: The point is that the fraud on the

part of Bell was not properly pleaded. In other words—

The Court I have your point.

Mr. Hunt: Yes; that is my point. In other words, this man stood by there for months, knowing what these representations were, did nothing about it, never attempted to repudiate them, and only came in here. He did not directly charge Bell or the church with fraud, but he tried to stand in the shade of the White case, where there were different parties and different circumstances, and said, because in that case a referee held there was fraud and the facts there showed that these parties promptly severed all connection with the church and had nothing further to do with it, yet Patrick said, "Well, because that happened in that case, I am entitled to get my property back." Now, that is the sum and substance of all this argument up here.

The Court: There was nothing to prevent Patrick from saying, "I believe the doctrine of the church but I think Bell defrauded me or the church defrauded me," is there?

(Tr. Page 8-a)

Mr. Hunt: But he does not repudiate the doctrines. He is willing to accept them.

The Court: What difference does that make?

Mr. Hunt: The record shows that Patrick still

believes those doctrines in spite of anything that Bell or anybody said.

The Court: What difference does that make? He could still be defrauded by Bell, could he not?

Mr. Hunt: But anybody could condone fraud, your Honor; and if fraud is committed, you are not ipso facto to get your property back. You have go to show that you have cancelled and you want to quit. But if you condone it as to any false statements and do nothing about it, you have condoned the fraud. A man can't blow hot and cold at the same time, your Honor.

The Court: Would it be your position that the man would have to quit the church in order to rescind?

Mr. Hunt: I think he would have to quit the church in order to get his property back.

The Court: Renounce the beliefs of the church?

Mr. Hunt: Yes, sir. In other words, that is the very distinction between dissenters and loyalists.

Mr. Crittenden: That is right, your Honor.

The Court: I think that is too rough a distinction, myself.

(Tr. Page 9-a)

Mr. Crittenden: I do, too.

Mr. Hunt: It might be.

The Court: I do not see any inconsistency in a man saying that "I believe Bell is a scoundrel. He defrauded me. But I believe the church or the tenets of the church are sound and good and pure."

Is there any legal obstacle to his saying that?

Mr. Hunt: Well, but how could he be defrauded if he believes in the beliefs of the church in which Mr. Bell believes? That is the point.

One more thing, your Honor, that I think is conclusive in this case: Here is an affidavit in the record that was signed and verified by Patrick before a notary public prior to bankruptcy, about two weeks, and was introduced or was filed in the State court receivership. One of the points they make here is that Patrick was never a member of The church, therefore, his property did not pass to the church; it could not pass until he became a member. But here is what he says, without qualification, in this affidavit: "That your affiant is a member of Christ's Church of the Golden Rule."

The Court: Is that in the record?

Mr. Hunt: It is, your Honor.

The Court: I will see it.

Excerpt from Peterson Transcript, June 12, 1946, 10 a.m.:

Tr. pg. 11, line 17: "The Referee: Well, the Petersen matter, part of it, I think may be settled pursuant to what I said yesterday. The trustees are impounding the current receipts from the Petersen restaurant. Now if that is going to continue, it is going to mean that the membership as a whole is going to have just that much less money to operate on. So I imagine the members themselves are going to have to submit the matter to Mr. Petersen, because if he still raises any question about the

ownership of this restaurant, it simply means we will have to [349] "continue to impound this money; and the members are the ones that are going to suffer by it. So I think I will put this matter, the Petersen matter, over until Tuesday, the 18th, to see what happens, to see what happens meanwhile."

[Title of District Court and Cause.]

ORDER DENYING MOTION TO SET ASIDE ADJUDICATION

The motion of George D. Patrick and Mr. and Mrs. Peter Petersen to set aside the adjudication in bankruptcy made and entered herein on November 19, 1945, coming on regularly for hearing before this court the 14th day of November, 1947, Howard B. Crittenden, Jr., appearing as counsel for the proponents of the motion, and Reuben G. Hunt, of Grainger and Hunt, appearing as counsel for the Trustees in Bankruptcy herein, and no appearance being made on behalf of the bankrupt corporation,

And it appearing that the motion itself is unaccompanied by any supporting affidavits or other evidence, and that the said Trustees have filed herein their verified answer in opposition to the said motion, and that at the hearing of the motion, the proponents thereof did not present, or offer to present, any evidence in support of the motion

other than evidence relating to the alleged misunderstanding on the part of Arthur L. Bell, the President and a Director of the bankrupt corporation, of the nature and character of the bankruptcy proceedings and of the adjudication in bankruptcy herein, and an offer to prove alleged misconduct after the adjudication of the Trustees in Bankruptcy, and of the Referee in Bankruptcy to whom this case was referred by this court for [351] administration, and such offer to prove such alleged misconduct having been objected to by counsel for the Trustees in Bankruptcy, and such objection having been sustained by the court upon the ground that the facts offered to be proved, even if true, would be insufficient to justify the setting aside of the adjudication,

And testimony having been received by the court from both the proponents of the motion and the Trustees in Bankruptcy relative to the alleged misunderstanding on the part of Arthur L. Bell, the President and a Director of the bankrupt corporation, of the nature and character of the bankruptcy proceedings and of the adjudication in bankruptcy herein,

And the said motion having been submitted to the court for its decision,

The court hereby finds that:

~~1. The proponents of the said motion, and each of them, are not parties in interest with respect to said motion, in that they have not alleged or proved, or offered to prove, that they are creditors,~~

~~or officers, or directors, or members of the bankrupt corporation, which is a religious non-profit corporation organized and existing without stockholders, under the laws of the State of California, and particularly Secs. 593 to 603 of its Civil Code.~~

[Initial in margin: Mathes J.]

1. The records of this case, of which the court takes judicial notice, disclose that the proponents of the said motion, and each of them, have been aware of the pendency of this bankruptcy proceeding ever since its inception on November 1, 1945.

2. The records of this case, of which the court takes judicial notice, disclose that since November 1, 1945, in the course of the administration of the bankrupt's estate, over two million dollars have been received and disbursed by officers of this court, including primary and ancillary receivers, and trustees, that over thirty sales of real and personal property, involving hundreds of thousands of dollars and the payment of liens upon such properties [352] in large amounts have been consummated under the supervision of this court, that about twenty-seven petitions in reclamation of real and personal property from the possession of such officers of the court have been filed herein and either determined or are pending and that some reconveyances of real and personal property have been made to the original owners thereof by such officers of this court under its supervision; and that, under such circumstances, a setting aside of

the adjudication at this time, some two years after this bankruptcy proceeding was commenced and the adjudication made, would cause almost inextricable confusion with respect to the titles of such real and personal property and cause serious financial loss to many innocent persons.

3. The records of this case, of which the court takes judicial notice, disclose that the adjudication in bankruptcy herein is regular on its face, in that Christ's Church of the Golden Rule is a corporation subject to bankruptcy as a voluntary bankrupt under the provisions of the National Bankruptcy Act of 1898, as amended, and that it had its domicile, residence and principal place of business at Los Angeles, California, within the jurisdiction of the above entitled court, for the greater portion of the six months immediately preceding the commencement of the bankruptcy proceedings herein, and that the adjudication in bankruptcy was made herein upon the voluntary petition of the said corporation through its officers and directors, including the said Arthur L. Bell, its President.

4. The said Arthur L. Bell and the bankrupt corporation did, at and prior to the filing of the voluntary petition herein, fully misunderstand the nature and character of these bankruptcy proceedings and the said adjudication in bankruptcy, and were fully and correctly informed with respect thereto, prior to such adjudication, and prior to the

commencement of this bankruptcy proceeding by competent counsel. [353]

And the court having concluded, as a matter of law, from said findings of fact, that this court had jurisdiction to make the said adjudication and that the same is regular upon its face, and that the proponents of the said motion are not parties in interest herein with respect thereto and that, in any event, they [Initialed in margin: Mathes J.] are guilty of laches in presenting such motion to the court for its consideration,

It Is Hereby Ordered that the said motion be and the same is hereby denied.

Done in open court November 14, 1947.

/s/ WM. C. MATHES,
District Judge.

Approved as to form, pursuant to Rule 7a of this court, this 1st day of December, 1947.

GRAINGER & HUNT,
By Reuben G. Hunt,
Attorneys for Trustees in Bankruptcy.

Judgment entered Dec. 29, 1947. Docketed Dec. 29, 1947. Book 47, Page 599. Edmund L. Smith, Clerk; by Louis J. Somers, Deputy.

(Affidavit of Service attached.)

[Endorsed]: Filed Dec. 29, 1947. [354]

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM ORDER DENY-
ING MOTION TO SET ASIDE ADJUDICA-
TION IN BANKRUPTCY

To the Honorable William Mathes, Judge of the
Above Entitled Court:

Notice is hereby given that Mr. and Mrs. Peter Petersen and George Patrick hereby Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the above-entitled Court in the above-entitled matter denying the motion of the said Mr. and Mrs. Peter Petersen and George Patrick to set aside the adjudication in bankruptcy in the above-entitled matter.

Dated: December 17, 1947.

/s/ HOWARD B. CRITTENDEN, JR.,
Attorney for Mr. and Mrs. Peter Petersen and
George Patrick.

(Acknowledgment by mail attached.)

[Endorsed]: Filed Dec. 29, 1947.

